Supreme Court, U.S.
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In The
Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a State, consistent with the First Amendment, may prohibit all political contributions by certain entities and individuals and their spouses because of their association with a single industry.

PARTIES TO THE PROCEEDINGS

Petitioner is the Casino Association of Louisiana, Inc., on behalf of itself and its individual members. The respondent is the State of Louisiana, through the Honorable Murphy J. Foster, Jr., Governor, and the Honorable Richard P. Ieyoub, Attorney General. In the court below, Treasure Chest Casino, L.L.C., Harrah's Operating Company, Inc., and Harrah's Entertainment, Inc. were intervenors.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner Casino Association of Louisiana, Inc. ("Association") has no parent corporation nor does any publicly held company own 10% or more of its stock. Petitioner has nine stockholders, each of which is a non-publicly held company that owns an equal share of the Association. Certain of the Association stockholders are owned by the following publicly held companies, each of which thereby indirectly owns 10% or more of Petitioner's stock: Boyd Gaming Corp.; Pinnacle Entertainment, Inc.; Argosy Gaming Co.; Penn National Gaming, Inc.; and Isle of Capri Casinos, Inc.

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American Gaming Association, State of the States: The American Gaming Association Survey Casino Entertainment, *at* http://www.americangaming.org/survey2001/economic_impact/impact.html 7

Choosing Sides In Living Wage Issue Not Easy, New Orleans Times-Picayune, Jan. 2, 2002, *available at* 2002 WL 3076396 5

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New Stelly Stats For Tax Plan New Orleans Times-Picayune, Jan. 2, 2002, *available at* 2002 WL 3109664 5

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PETITION FOR WRIT OF CERTIORARI

The Casino Association of Louisiana, Inc. ("the Association"), on behalf of itself and its individual members, respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court in this case.[1]

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App., *infra*, 1) is reported at 820 So. 2d 494 (La. 2002). The opinion of the district court (App., *infra*, 42) is unreported.[2]

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on June 21, 2002. App., *infra*, 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

[1] The members of the Association are: Catfish Queen Partnership in Commendam; Grand Palais Riverboat, Inc.; Horseshoe Entertainment, LLP; Louisiana Riverboat Gaming Partnership; St. Charles Gaming Company, Inc.; Treasure Chest Casino, LLC; Louisiana Casino Cruises, Inc.; PNK (Bossier City), Inc.; and PNK (Harvey), Inc.

[2] There was no intermediate-court review. Under Louisiana law, the State appealed the district court judgment directly to the Louisiana Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech. . . . " This provision applies to the States through the Fourteenth Amendment. The pertinent provisions of the Louisiana Campaign Statute are:

> L. (2) – *No person* to whom this Subsection is applicable . . . *shall make a contribution, loan, or transfer of funds*, . . . , to *[i] any candidate, [ii] any political committee of any such candidate, or to [iii] any other political committee which supports or opposes any candidate.*
>
> (3) The Subsection shall be applicable to all of the following:
>
> * * *
>
> (a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines . . . and any person who owns a riverboat upon which gaming activities are licensed to be conducted.
>
> (iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming

devices or gaming equipment including slot machines . . . , and any person who owns a casino where such gaming operations are licensed.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity. . . . "Interest," as used in this Subparagraph, means ownership by an individual or his spouse, . . . which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

(c) *Any officer, director, trustee, partner, or senior management level employee or key employee* as defined in R.S. 27:205(19) of any person included in Subparagraphs (a) or (b) of this Paragraph.

* * *

(e) *The spouse* of any person to whom this Subsection is made applicable by this Paragraph.[3]

The full text of the statute is reprinted in an appendix to this petition. App., *infra,* 54.

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[3] La. Rev. Stat. Ann. §§ 18:1505.2(L)(2)(3)(a-e) (emphasis added). Also at issue are the administrative regulations implementing the statute. See La. Admin. Code tit. 42, pt. IX, § 2941. App., *infra,* 73.

STATEMENT

This case concerns the constitutionality of a Louisiana statute that prohibits political contributions by a small group of entities and individuals because they are associated with the casino industry.

1. The 1996 Enactment of the Louisiana "Campaign Statute"

In 1996, the Louisiana Legislature enacted the "Campaign Statute," which forbids political contributions by legal "persons" who conduct, own, or manage Louisiana casinos, and their spouses. La. Rev. Stat. Ann. § 18:1505.2(L). The statutory ban applies to many individuals, including officers, directors, and partners of casinos, "senior management level employee[s]" and "key employee[s]" as then defined in the state gaming regulatory statute,[4] and their spouses. A witness estimated that the ban applies to less than 300 individuals associated with Louisiana's fifteen riverboat casinos and one land-based casino. Weill Aff. at 3. Those entities and individuals may not make any contribution to candidates for state and local office, or to political party committees.

The statute also forbids covered persons from making contributions to any "political committee which supports or opposes any candidate," including groups that support or

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[4] Under La. Rev. Stat. Ann. § 27:205(19), a "key employee" was defined as "an employee or agent of the gaming operator, a licensee, or permittee whether or not a gaming employee who, in the opinion of the corporation, holds or exercises critical or significant management or operating authority. . . . " This provision was repealed by La. Acts 2001, No. 1222, § 1, effective July 2, 2001, and has not been replaced.

oppose ballot propositions and constitutional amendments.[5] Recent examples of such ballot issues include a vote last February on whether New Orleans public contractors should be required to pay a "living wage" above the federal minimum wage, *see Choosing Sides In Living Wage Issue Not Easy,* New Orleans Times-Picayune, Jan. 2, 2002, *available at* 2002 WL 3076396, and a constitutional amendment on this November's ballot to reform the State's tax structure. *See New Stelly Stats For Tax Plan, id.,* July 21, 2002, *available at* 2002 WL 3109664. Violations of the Campaign Statute trigger civil penalties of up to $10,000. La. Rev. Stat. Ann. § 18:1505.2(J)(1). Criminal penalties for violations are confined to candidates and officials of political committees. *Id.* § 18:1505.6(C).

Under legislation adopted in 1981, all other Louisiana citizens – including corporations – may make contributions to candidates and political committees within certain dollar limits, which range from $1,000 to $5,000, depending upon the office. La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a). Records of political contributions are publicly available, and are routinely reported by local media outlets. La. Rev. Stat. Ann. § 18:1482.

The purpose of the Campaign Statute, as recited in its text, is to "prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly persons substantially interested in the gaming industry in this state." La.

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[5] Under La. Rev. Stat. Ann. § 18:1483(14)(a)(1), a "political committee" is defined as two or more persons "organized for the primary purpose of supporting or opposing one or more candidates, propositions, recalls of a public officer, or political parties."

Rev. Stat. Ann. § 18:1505.2(L)(1). Despite referring to "special interests" generally, the statute covers only persons associated with gaming.

The Louisiana Legislature legalized gaming in 1991 and 1992 in four separate statutes: one permitting a land-based casino in New Orleans; one authorizing gambling on cruise ships operating out of that city; a statute allowing gambling on riverboats in designated rivers; and a law permitting video poker machines in various locations. The casino statutes are lengthy and detailed, providing for exacting licensing and regulation. *See* La. Rev. Stat. Ann. §§ 4:601-686 (land-based casino); *id.*, §§ 4:501-562 (riverboats). State regulators review and approve a casino's financial procedures, internal accounting controls, and security operations. The State also examines the casino's job descriptions and procedures for handling cash, checks, chips and other cash equivalents. All gaming equipment is subject to state standards and testing. Five-year casino licenses are granted only after public hearings. La. Rev. Stat. Ann. §§ 27:71, 73-75.

For entities and individuals, the overarching license requirement is "suitability," which requires that each license applicant demonstrate, by clear and convincing evidence, that he "is of good character, honesty and integrity, and that he is a person whose prior activities, reputation, habits, and associations do not pose a threat to the public interest or the gaming industry." No license may be issued to anyone convicted of a crime punishable by more than one year in jail, or of any gambling, fraud, theft, or violent offense. *Id.* § 27:28. The Louisiana Gaming Control Board denies licenses to any persons it finds unsuitable. *See Leslie Bonano, Inc. v. Louisiana*, 01-1912 (La. App. 1st Cir. 06/21/02), 822 So.2d 104 (upholding denial of license

for lack of suitability); *Twin B. Casinos, Inc. v. Louisiana*, 00-1681 (La. App. 1st Cir. 09/28/01), 809 So.2d 995 (same). A casino license is a revocable privilege that may be revoked if a licensee no longer meets the suitability standard. La. Rev. Stat. Ann. §§ 27:52, 27:59.

In the year 2000, the commercial casino industry paid $381 million of taxes to the State of Louisiana and employed over 17,000 people in the State. *See* American Gaming Association, State of the States: The American Gaming Association Survey of Casino Entertainment, *at* http://www.americangaming.org/survey2001/economic_impact/impact.html.

2. The Louisiana Supreme Court Invalidates the Campaign Statute for the Video Poker Industry in 1999, Then Upholds It for the Casino Industry In 2002

Parties associated with the video poker industry brought the first challenge to the Campaign Statute. In *Penn v. State ex rel. Foster*, 751 So. 2d 823 (La. 1999), *cert. denied sub nom. Louisiana v. Penn*, 529 U.S. 1109 (2000), the Louisiana Supreme Court applied the ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976), to hold the statute and its enabling regulations facially unconstitutional. *Penn* emphasized that *Buckley*, which upheld limits on the amount of contributions as a "narrow exception" to speech and association rights protected by the First Amendment, still preserved a citizen's right to express political views through campaign contributions. *Penn*, 751 So. 2d at 833 (Calogero, C.J., concurring). Under *Buckley*, the state court held, "it was the symbolic act of contributing to a candidate that constituted political expression, and [] the expression encompassed in the act of contributing was

unrelated to the size of the contribution." *Id.* But *Penn* held that a total ban differs "in kind" from a limit on the contribution amount, which *Buckley* called a "marginal restriction" on speech. *Id.* at 841 (Kimball, J., concurring). "[A] prohibition cuts off all expression associated with making a contribution to a candidate." *Id.* at 834 (Johnson, J., concurring). Accordingly, *Penn* applied strict scrutiny review and declared the Campaign Statute unconstitutional for video-poker licensees.

This case was filed in state court in September 2000, after the *Penn* ruling, and presented a virtually identical attack on the same statute, on behalf of persons associated with the casino industry. The Association and its members requested a declaratory judgment that the Campaign Statute infringes First Amendment rights of speech and association, as well as equal protection of the laws.[6] Three individual casino companies (The Treasure Chest Casino, L.L.C., Harrah's Operating Company, Inc., and Harrah's Entertainment, Inc.) intervened and sought similar relief.

After accepting affidavit evidence in a bench trial, the district court declared the challenged portions of the statute unconstitutional under the First and Fourteenth Amendments, following *Penn*. App., *infra*, 40-41.[7] The trial court noted the absence of evidence from the State showing "that the prohibitions in the Campaign Statute will prevent any corruption in the electoral process," since state

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[6] The petition, without annexed exhibits, is reproduced in the Appendix, *infra*, 74.

[7] The court amended its judgment to state expressly that the regulations implementing the Campaign Statute were also unconstitutional. App., *infra*, 52-53.

law already limited the size of campaign contributions by all citizens. *Id.* at 47. Citing *Penn* and *44 Liquormart v. Rhode Island*, 517 U.S. 484 (1996), the district court also rejected the State's argument that casino licensees should not be accorded First Amendment rights, explaining that "[o]nce a State confers the benefit of legalization upon the gaming industry, it cannot require the industry to surrender its First Amendment rights." *Id.* at 49.[8]

The State appealed directly to the Louisiana Supreme Court. One Justice in the *Penn* majority had retired, and the newly elected Justice now sided with the *Penn* dissenters to reach the opposite outcome.

The opinion below cited two principal grounds for sustaining the Campaign Statute. *First*, the court reasoned that an abridgement of political speech can be "saved" so long as other avenues for political expression remain open. The court highlighted Petitioners' assertedly unfettered right to "make *unlimited independent expenditures* supporting or opposing a candidate." *Casino Association*, App., *infra*, 15 (emphasis in original). Petitioner and its members, the court reasoned, also may "become [] member[s] of a political association and [] personally assist in the association's effort on behalf of candidates; . . . urge their employees to support or oppose particular candidates; . . . openly support individual candidates by displaying yard signs and voluntarily working in political

[8] After holding the statute unconstitutional on First Amendment grounds, the trial court found it unnecessary to rule on the Association's equal protection argument. The Louisiana Supreme Court also did not consider that claim, then entered a final judgment without providing for consideration of that issue on any remand.

campaigns; . . . [and] sponsor phone banks to encourage persons to vote." *Id.* The court noted that several States also bar political contributions from "certain gaming interests,"[9] and that the New Jersey courts rejected a First Amendment challenge to the ban enacted in that State. *Id.* at 17-18 (citing *In re Petition of Soto*, 236 N.J. Super. 303, 565 A.2d 1008 (App. Div. 1989), *certif. denied*, 121 N.J. 608, 583 A.2d 310, *cert. denied*, 496 U.S. 937 (1990)).

Second, the court below ruled that the Campaign Statute was valid even though it imposes a complete ban on contributions. The court found "no indication in *Buckley* that a contribution limit of zero, as opposed to a contribution limit of $1,000, would be unconstitutional." *Id.* at 16. The court thus rejected *Penn*'s distinction between a prohibition and a limit – a distinction that triggered strict scrutiny in *Penn*. *Id.* at 19. The court held that the same test applies to both prohibitions and limits: the one articulated in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-88 (2000) (*"Shrink Missouri"*) (citing *Buckley*, 424 U.S. at 25). *Id.*:

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[9] *See* Ind. Code Ann. § 4-33-10-2.1 (prohibits contributions from any officer or person who holds an interest in a gaming entity); Iowa Code § 99F.6(4)(a) (prohibits contributions from riverboat gambling corporations); Ky. Rev Stat. Ann. § 154(a).160 (prohibits contributions from persons owning lottery contracts); Mich. Stat. § 7(b)(4)-(5) (prohibits contributions from any licensee or person who has an interest in a gaming entity); Neb. Rev. Stat. § 49-1469.01 (prohibits contributions from lottery contractors for duration of contract and three years after); N.J. Stat. § 5:12-138 (prohibits contributions from casino officers or key employees); Va. Code Ann. § 59.1-375, 376 (prohibits contributions from pari-mutuel corporations, executives, and their spouses and families).

> [A] contribution limit involving "significant interference" with associational rights . . . could survive if the government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest," . . . though the dollar amount of the limit need not be "fine tun[ed]."

The state court then turned to what it called the "heart of the matter": "the history of gambling in Louisiana." *Id.* Quoting from a dissent in *Penn*, the court noted that gambling historically "has been recognized as a vice activity [that] poses a threat to public health and public morals," and stressed the Legislature's interest in "strictly regulat[ing]" that industry. *Id.* at 20, 23.

The state court found the contribution ban was justified by affidavits showing "the public perception that gaming is associated with political corruption" and that nine states have prosecuted government officials in gaming-related cases.[10] The court also cited evidence that the gaming industry makes money (described as a "staggering sum"). App., *infra,* 28. The court concluded that "it is

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[10] This latter assertion was not well supported by the only record evidence on the subject, an article from a website sponsored by a prominent opponent of legalized gaming. Ronald A. Reno, *Gambling and Political Corruption,* Citizen Link, *at* http://www.family.org/cforum/research/papers/a0000934.html (1997). That article pointed to prosecutions in nine states as supposedly involving the gaming industry, but two of the listed prosecutions were the result of FBI "stings," and thus are no reflection of actual corruption. One of the cited instances involved bribery charges that were dismissed by the Indiana Supreme Court, *see generally Wurster v. State*, 715 N.E.2d 341 (Ind. 1999), and two more involved the horse-racing industry, not casinos.

completely plausible, and not at all novel," for the legislature "to distance gaming interests from the ability to contribute to candidates." *Id.*

The court rejected the argument that the contribution ban was not narrowly tailored to any interest in controlling corruption, an argument that stressed (i) Louisiana's pervasive regulation of the casino industry, and (ii) the contribution limits and public disclosure of contributions that apply to all Louisianans. The court recited statements in *Buckley* that the contribution limits in that case, which applied to all citizens, were a proper supplement to bribery laws. *Id.* at 209 (citing *Buckley*, 424 U.S. at 27-28).

The three remaining members of the *Penn* majority dissented, protesting that *Penn* could not be distinguished. They emphasized again the distinction between contribution limits and an absolute ban, noting that "the contested provisions' complete prohibition of contributions is more than merely a 'marginal restriction' on the casino's First Amendment rights as allowed by *Buckley v. Valeo.*" *Id.* at 33 (Calogero, C.J., dissenting). Justice Kimball observed that the State's burden of justifying a contribution ban is "even more onerous," and had not been met. *Id.* at 37.

REASONS FOR GRANTING THE PETITION

This case presents a core question about the First Amendment protections for the act of making political contributions: Whether a State may abrogate that right for persons associated with a legal industry. More than two dozen state laws impose contribution bans that are defined by occupation or industry affiliation, based on a legislative conclusion that each group presents a

particular risk of corruption or is publicly perceived to do so. The lower courts have divided on the First Amendment's application to those bans. This question, left unanswered by both *Buckley* and *Shrink Missouri*, should be resolved by this Court.

1. Louisiana's Selective Ban on Contributions Cannot Be Reconciled With the First Amendment

A political contribution is a "symbolic act" protected by the First Amendment as a "general expression of support for the candidate and his views." *Buckley*, 424 U.S. at 20-21. *Buckley* stressed that contribution limits "operate in an area of the most fundamental First Amendment activities," which are protected by "'our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Id.* at 14 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). The making of a political contribution also reflects "protected associational freedoms": "Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals." *Id.* at 22. These holdings were reaffirmed in *Shrink Missouri*, which observed that contribution restrictions bear "more heavily on the associational right than on freedom to speak." 528 U.S. at 388.

Both *Buckley* and *Shrink Missouri* approved dollar limits on political contributions, accepting the rationale that such limits can be a proper response to "the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." *Buckley*, 424 U.S. at 28;

see also Shrink Missouri, 528 U.S. at 389. Because campaign finance laws apply to fundamental rights at the heart of the democratic system, the First Amendment requires that the State "demonstrate[] that contribution regulation [is] 'closely drawn' to match a 'sufficiently important interest,' though the dollar amount of the limit need not be 'fine tun[ed].'" *Shrink Missouri*, 528 U.S. at 387-88; *see also FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001). This Court has identified only one state interest – combating corruption and its appearance – that justifies the constitutional cost of campaign finance regulation. *See Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 609 (1996).

The Louisiana Campaign Statute presents two central differences from the contribution limits upheld in *Buckley* and *Shrink Missouri*: (i) It completely eliminates the right to make campaign contributions (ii) for a small group of entities and individuals, based on their association with a disfavored industry. Because of these differences, this statute cannot survive review under *Buckley* and *Shrink Missouri*, or under traditional strict scrutiny analysis.

(a) A Flat Ban On Political Contributions Is Subject To The Most Exacting Review.

Both *Buckley* and *Shrink Missouri* emphasized that the contribution limits before them allowed citizens to make non-trivial campaign contributions, and thus imposed only a "marginal restriction" on expression and associational rights. 424 U.S. at 20; 528 U.S. at 386. That rationale cannot be applied to the Louisiana Campaign Statute. Persons covered by that statute can neither make the "symbolic act" of expressing support for a candidate

through a contribution, nor use a contribution to associate with like-minded supporters.

The court below sought to fit within the reasoning of *Buckley* and *Shrink Missouri* by characterizing the contribution ban as a "limit of zero." App., *infra,* 16. Such semantics cannot paper over the fundamental difference between contribution limits and an outright ban. This Court has never approved the elimination of specific First Amendment rights because the speaker may have remaining methods of expression or association. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939), *quoted in Spence v. Washington*, 418 U.S. 405, 411 n. 4 (1974); *see also Hill v. Colorado*, 530 U.S. 703, 782 (2000); *Shrink Missouri*, 528 U.S. at 418, n. 6. As found by the plurality in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 257 (1986), a statute need not remove all opportunities for speech to violate First Amendment rights. If the remaining opportunities are subject to more burdens, then only a compelling interest can justify government interference with First Amendment activity. *Id.* at 257. Consequently, the Legislature may not justify a broad canceling of certain First Amendment rights on the ground, accepted by the court below, that other rights were not impaired, such as displaying yard signs, participating in phone banks, or making independent expenditures.[11]

[11] The court below misread the Campaign Statute in concluding that casino-related persons have an unfettered right to make independent expenditures. Covered persons may make such expenditures by, for example, purchasing advertising on their own. But the statute bars

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The court below diminished the First Amendment interests at stake by ignoring the increased impact of political messages communicated by organized groups. "Effective advocacy . . . is undeniably enhanced by group association." *Buckley*, 424 U.S. at 15 (internal quotations and citation omitted). An individual's voice will be heard more clearly when it is combined with those of others. Equally, by supporting a candidate who can command the attention of the media and the public, a citizen can gain a wider audience for their shared views. Citizens have a right "to band together in promoting among the electorate candidates who espouse their political views." *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973), *quoted in Cousins v. Wigoda*, 419 U.S. 477, 487 (1975). As the Court explained in striking down a limitation on individuals banding together to make independent expenditures, "allowing the presentation of views while forbidding the expenditure of more than $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system." *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 493 (1985).

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covered persons from contributing to a "political committee which supports or opposes any candidate." La. Rev. Stat. Ann. § 18:1505.2(L)(2). "Political committee" is defined in state law as two or more persons "organized for the primary purpose of supporting or opposing one or more candidate, propositions, recalls of a public officer, or political parties." *Id.* § 18:1483(14)(a)(ii). This definition reaches well beyond candidate campaign committees to party committees and many civic action groups.

This Court applies particularly stringent scrutiny to statutes that eliminate rather than regulate a First Amendment right. Thus, strict scrutiny applies to prior restraints of speakers, *e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976), while more tolerant review applies to regulation of the "time, place, or manner" of the speech. *Hill v. Colorado*, 530 U.S. at 719. Because the Louisiana Campaign Statute eliminates certain First Amendment rights of Petitioners, it should be subjected to the most exacting judicial review. This conclusion is powerfully reinforced because the practical effect of the Campaign Statute is to silence casino-associated speakers, which must impoverish the marketplace of ideas. For example, petitioners and their senior employees and their spouses could not participate in a "political committee" that supports or opposes any candidate to support or oppose a ballot proposition of importance to the industry, but race tracks, Indian tribes, restaurant owners, and anti-gaming activists would be unencumbered. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) ("government regulation may not favor one speaker over another"); *R. A. V. v. St. Paul*, 505 U.S. 377, 391-92 (1992) (government may not "license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules"). This is precisely why the First Amendment so strongly disfavors outright prohibitions on protected speech.[12]

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[12] This Court has resolved that the power to regulate the gaming industry does not carry with it the power to suppress political speech by industry participants. As explained in *44 Liquormart*, "the First Amendment directs that government may not suppress speech as easily as it may suppress conduct, and that speech restrictions cannot be

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Moreover, speech restrictions that look to the "perspective of the speaker" to define the speech restricted, and thereby inhibit one side of public debate, are presumptively unconstitutional, viewpoint-based restrictions. *Rosenberger*, 515 U.S. at 829; *see also R. A. V.*, 505 U.S. at 391-92. Although the speech restriction here is defined by the speaker's employment, that definition serves as a proxy for viewpoint and results in the same offense to the First Amendment: abridging speech on one side of the public debate. Whether or not this status-based speech restriction is properly termed viewpoint-based, the Campaign Statute favors speech from other perspectives over speech from a casino industry prospective, and should therefore be subjected to the strictest scrutiny.

(b) The Statute Is Not Closely Drawn To Justify a Ban Singling Out One Industry.

Unlike the broadly applied contribution limits at issue in *Buckley* and *Shrink Missouri*, the Louisiana Campaign Statute eliminates association and speech rights for a few persons based on their association with a single industry. *Shrink Missouri* teaches that such restrictions on core First Amendment values are subject to "exacting scrutiny" to assure that they are "closely drawn" to carry out the state's regulatory interests, as demonstrated with "empirical evidence." 528 U.S. at 386, 387, 391. The State presented no significant evidence justifying its decision to single out the casino industry for a blanket restriction on

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treated as simply another means that the government may use to achieve its ends." 517 U.S. at 512.

First Amendment rights, and the statute is so facially overbroad that it could never be termed "closely drawn."

As *Shrink Missouri* explains, whether the State has a "sufficiently important interest" to restrict political contributions will depend on the "novelty and plausibility" of the justification. 528 U.S. at 391. The Missouri statute at issue in that case set contribution limits for all citizens and was based on a commonsense anti-corruption rationale already accepted in *Buckley*. Accordingly, the quantum of "empirical evidence" required to support that restriction was relatively low. *Id.* at 393. This case is quite different. Louisiana has other campaign finance and anti-corruption statutes of general application. The Campaign Statute strips specific First Amendment rights from a small group of persons associated with the casino industry. Such an extreme step is both novel and implausible, and should be supported by specific and powerful empirical evidence of corruption and the appearance of corruption.

This Court confronted a similar situation when it decided the commercial speech claim in *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173 (1999). Broadcasters sued to enjoin enforcement of a federal statute that prohibited "some, but by no means all, broadcast advertising of lotteries and casino gambling." 527 U.S. at 176. The government defended the statute as minimizing social costs associated with gaming and as assisting the anti-gaming policies of neighboring States. *Id.* at 185-86. The Court found those public interests could be sufficient to justify speech regulation, but concluded that the statute's differential treatment of similar actors fatally undermined the justifications (*id.* at 189-92):

> [A]ny measure of the effectiveness of the Government's attempt to minimize the social costs of gambling cannot ignore Congress' simultaneous encouragement of tribal casino gambling. . . . And, as the Court of Appeals recognized, the Government fails to "connect casino gambling and compulsive gambling with broadcast advertising for casinos" – let alone with broadcast advertising for non-Indian commercial casinos. . . .
>
> [T]he Government presents no convincing reason for pegging its speech ban to the identity of the owners or operators of the advertised casinos. . . . Yet the Government admits that tribal casinos offer precisely the same types of gambling as private casinos.[13]

The statute here fails for the same reason. The court below found the contribution "limit of zero" to be justified by "the history of gambling in Louisiana," relying on a recitation of events back to the eighteenth century. App., *infra,* 19-23. Although the casino industry has an undeniably colorful history, that history provides no valid basis for limiting the First Amendment rights of businesses and employees who operate in today's highly regulated casino environment. If it did, then the First Amendment rights of participants in many other industries also could be eliminated. For example, the oil industry corrupted the Secretary of the

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[13] *See also United States v. Nat'l Treasury Employees Union,* 513 U.S. 454 (1995) (honoraria ban applicable to virtually all federal employees unconstitutional because evidentiary basis – preventing corruption and its appearance – supported such a ban only for legislators and other high level employees).

Interior in the 1920s,[14] and some have argued that the current Administration is unduly solicitous of that industry's concerns. Highway constructors participated in bribery schemes involving a Vice President of the United States[15] and a governor of Louisiana.[16] There have been numerous public corruption prosecutions involving government contractors,[17] insurance entities,[18] construction firms,[19] the

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[14] *See generally Mammoth Oil Co. v. United States*, 275 U.S. 13 (1927) (the "Teapot Dome" scandal).

[15] *See Agnew v. State*, 446 A.2d 425 (Md. 1982).

[16] *See generally, e.g., Edwards Conviction Is Upheld*, New Orleans Times-Picayune, August 24, 2002, *available at* 2002 WL 25251462 ("Edwards is the second governor in Louisiana history to be sentenced to prison. Gov. Dick Leche was convicted in 1940 of taking kickbacks from state highway construction contracts and served about five years in prison.")

[17] *See, e.g., United States v. Kinter*, 235 F.3d 192 (4th Cir. 2000), (bribery and kickbacks by contractors), *cert. denied*, 532 U.S. 937 (2001); *May v. United States*, 175 F.2d 994 (D.C. Cir. 1949) (congressman); *United States v. Biaggi*, 853 F.2d 89 (2d Cir. 1988) (congressman); *United States v. Carroll*, 860 F.2d 500 (1st Cir. 1988) (head of local water department); *United States v. Glantz*, 884 F.2d 1483 (1st Cir. 1989) (sanitation contractors); *United States v. Dischner*, 974 F.2d 1502 (9th Cir. 1992) (mayor and department of public works).

[18] *See, e.g., United States v. Brown*, No. 01-30173, 2002 WL 1967502 (5th Cir. Aug. 23, 2002) (2001) (insurance commissioner involved in sham settlement); *United States v. Evans*, 30 F.3d 1015 (8th Cir. 1994) (state insurance examiner bribed); *United States v. Jackson*, 209 F.3d 1103 (9th Cir. 2000) (state senator bribed); *United States v. Coon*, 187 F.3d 888 (8th Cir. 1999) (state insurance regulator bribed); *United States v. Hyde*, 448 F.2d 815 (5th Cir. 1971) (Alabama Attorney General); *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982) (state legislator).

[19] *See, e.g., United States v. Milan*, No. 01-2603, 2002 WL 2007187 (3d Cir. Sept. 3, 2002) (mayor of Camden accepted kickbacks from construction contractors, recycler, air conditioning company, home improvement company); *United States v. Krilich*, 257 F.3d 689 (7th Cir.

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liquor industry,[20] banks,[21] and software designers.[22] Corrupt acts by past participants in all those industries cannot justify revoking the First Amendment rights of other participants in those industries.

Moreover, the State never showed that disclosed, regulated, and limited campaign contributions by casino-related persons are connected to corruption. Although large contributions – with their implicit *quid pro quo* – might risk the sort of corruption that justified the contribution limits in *Buckley*, the Louisiana Legislature has addressed that risk by prescribing *uniform* contribution limits that apply to all citizens. No casino licensee or spouse can make contributions over those limits. Indeed, the corruption rationale runs afoul of the State's own act of licensing Petitioners and their officers, directors and senior management as "suitable." Having found those

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2001) (state officials bribed), *cert. denied*, 122 S. Ct. 1175 (2002); *United States v. Orlando-Figueroa*, 229 F.3d 33 (1st Cir. 2000) (mayor solicited bribe); *United States v. Palumbo Bros.*, 145 F.3d 850 (7th Cir. 1998) (state transportation official bribed); *United States v. Griffin*, 154 F.3d 762 (8th Cir. 1998) (Speaker of Missouri House of Representatives bribed to assist construction lobbyist).

[20] *See, e.g., United States v. Evans*, 192 F.3d 698 (7th Cir. 1999) (alderman extorted money from liquor licensees); *United States v. Blanton*, 719 F.2d 816 (6th Cir. 1983) (Tennessee governor); *United States v. Barber*, 668 F.2d 778 (4th Cir. 1982) (state alcoholic beverage commissioner).

[21] *See, e.g., Illinois ex rel. Ryan v. Brown*, 227 F.3d 1042 (7th Cir. 2000) (state treasurer bribed); *United States v. DeVegter*, 198 F.3d 1324 (11th Cir. 1999) (county executive bribed); *United States v. Caldwell*, 544 F.2d 691 (4th Cir. 1976) (West Virginia state treasurer).

[22] *Ex-Treasury Official Gets 7 Years for Fraud*, Wash. Post, Sept. 10, 2002, at B2 (senior official convicted of scheme to secure kickbacks from software contracts).

persons to possess the honesty and integrity needed to qualify for a casino license, *see* pp. 6-7, *supra,* the State can hardly claim that such suitable individuals present a uniquely high potential for corruption.

The record here lacks the empirical evidence required by *Shrink Missouri* and *Greater New Orleans Broadcasting* to justify this industry-specific denial of First Amendment rights for the purpose of combating corruption. The Campaign Statute's repugnance to the First Amendment is reflected in the plainly less restrictive alternatives available to the Legislature to serve its professed purpose. The State could, for example, have required more speech rather than less by publicizing the industry affiliation of donors. Alternatively, the statute could exempt referendum questions and constitutional amendments, as those generally present a much lower opportunity for corruption. Where core protected speech of a specific group is abridged, the existence of such less restrictive means of achieving the State's asserted interest is dispositive. *See United States v. Playboy Entm't Group,* 529 U.S. 803 (2000) (availability of less restrictive alternative for blocking pornographic cable signals rendered restriction unconstitutional); *Rubin v. Coors Brewing Co.,* 514 U.S. 476, 490-91 (1995) (availability of less restrictive means as alternative basis for striking down ban on alcohol content on labels).

2. The Spread of Selective Contribution Bans, and Inconsistent Rulings on Their Constitutionality, Warrant Review by This Court

Seven States in addition to Louisiana have imposed contribution bans on gaming corporations, owners of gaming businesses, lottery contractors, or pari-mutuel

businesses. *See* n. 9, *supra*. Like the Campaign Statute, several of those laws also apply to individuals who are officers, owners, or senior managers of those entities. This legislative pattern, however, is not confined to the gaming industry.

Registered lobbyists have been targeted for blanket bans on contributions in South Carolina and California,[23] and they may not make contributions during the legislative session in at least nine other States.[24] Six States and the District of Columbia limit contributions from insurers.[25] Florida does not permit contributions to candidates for Commissioner of Agriculture by licensed food outlets and convenience stores.[26] In Georgia, public utilities cannot contribute to any political campaign, and all regulated entities are barred from contributing to any candidate for an office that regulates that entity.[27] Massachusetts prohibits contributions by utilities, insurers, banks, and trusts.[28]

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[23] S.C. Code Ann. § 2-17-80 (1976); Cal. Gov't Code § 85702.

[24] Ariz. Rev. Stat. Ann. § 41-1234.01; Conn. Gen. Stat. Ann. § 9-3331; Kan. Stat. Ann. § 25-4153a; Minn. Stat. § 10A.273; N.M. Stat. Ann. § 2-11-8.1 (1978); Or. Rev. Stat. § 260.174 (2001); Utah Code Ann. § 36-11-305 (1953); Vt. Stat. Ann. tit. 2, § 266; Wis. Stat. Ann. § 13.625.

[25] Two states bar only insurer contributions to candidates for insurance commissioner, Ga. Code Ann. § 21-5-30.1; Wash. Rev. Code § 48-30.110, while four others and the District of Columbia prohibit all insurer contributions. D.C. Code Ann. § 31-4324; Del. Code Ann. tit. 18, § 2304(6); Minn. Stat. § 72A.12; Mont. Code Ann. § 33-18-305; Wyo. Stat. Ann § 26-13-120.

[26] Florida Stat., tit. IX § 106.082.

[27] Ga. Code Ann. §§ 21-5-30(f), 21-5-30.1.

[28] Mass. Gen. Laws. Ann. ch. 55, § 8.

Illinois does not permit liquor licensees or their employees to make political contributions.[29]

The lower courts have reached inconsistent outcomes when applying the First Amendment to such bans. *Petition of Soto*, *supra*, sustained a New Jersey prohibition on casino employee contributions which is as broad as the Louisiana Campaign Statute. Bans on contributions by lobbyists during the legislative session have been upheld in both North Carolina and Vermont. *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000); *Kimbell v. Hooper*, 164 Vt. 80, 665 A.2d 44 (Vt. 1995). The Alaska Supreme Court approved a prohibition on lobbyist contributions to any legislator representing a district other than the one in which the lobbyist voted. *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000). In *Institute of Governmental Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183 (E.D. Cal. 2001), a complete ban on lobbyist contributions was upheld even though the California Supreme Court struck down a predecessor ban in *Fair Political Practices Comm'n v. Superior Court*, 599 P.2d 46 (Cal. 1979).

The broad prohibition on any campaign contributions by Illinois liquor licensees, their employees and agents was sustained in *Schiller Park Colonial Inn v. Berz*, 349 N.E.2d 61 (Ill. 1976). And the Georgia Supreme Court rejected a First Amendment challenge to a narrower statute which barred insurance companies (but not their

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[29] Ill. Rev. Stat., ch. 43, par. 132, Art. VI (Liquor Control Act), 12a (1973).

employees) from making contributions to candidates for state insurance commissioner. *Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890 (Ga. 1993).

In contrast, contribution bans enacted by Congress, North Carolina, and Minnesota have been invalidated on First Amendment grounds to the extent they applied to non-profit corporations. *Beaumont v. FEC*, 278 F.3d 261 (4th Cir. 2002) (Federal Election Campaign Act); *North Carolina Right to Life, supra*, 168 F.3d at 705 (North Carolina); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994) (Minnesota). The Ninth Circuit has held that two bans violated the First Amendment: an Oregon statute that barred contributions by out-of-state persons, *Vannatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998), and a California proposition that prohibited campaign-to-campaign contributions. *Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992). Finally, the contribution ban in the Louisiana Campaign Statute does not apply to members of the video poker industry following the 1999 ruling in *Penn, supra.*

The statutes challenged in these decisions have varied. Some banned contributions to all state candidates; others reached only contributions to candidates for offices that regulate the industry covered by the prohibition. Some limited individuals while others applied only to legal entities. Those factors, however, can be an unreliable guide to the outcome in each case. *Compare Schiller Park Colonial Inn, supra* (upholding broad ban on contributions by liquor licensees and employees), *with Service Employees Int'l* (striking down ban that applies to no natural persons). More important, the justification for every ban has been uniform: *Buckley*'s holding that concern for the reality and appearance of corruption may justify limits on

the First Amendment right to make political contributions. It would be a proper and timely exercise of this Court's jurisdiction to review the extension of that justification beyond contribution limits to outright bans and beyond statutes of general application to statutes directed at certain entitities and individuals.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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September 19, 2002

820 So.2d 494

Supreme Court of Louisiana.

CASINO ASSOCIATION OF LOUISIANA &
Individual Members

v.

STATE of Louisiana, Through the Honorable
Murphy J. FOSTER, Governor, The
Honorable Richard P. Ieyoub, Attorney General.

No. 2002-CA-0265.

June 21, 2002.

R. Gray Sexton, L. Rand Dennis, Richard P. Ieyoub, Attorney General, Maris L. McCrory, Baton Rouge, Counsel for Applicant.

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VICTORY, J.

This case is before us on direct appeal of a finding by the district court that the statutes prohibiting campaign contributions from the riverboat and land-based casino industries are unconstitutional. After reviewing the record and the applicable law, we reverse the judgment of the district court and uphold the constitutionality of these statutes.

FACTS AND PROCEDURAL HISTORY

On September 20, 2000, the Casino Association of Louisiana ("CAL")[1] and its individual members filed a Petition for Declaratory Judgment in the 19th Judicial District Court alleging that the provisions of La. R.S. 18:1505.2(L) prohibiting campaign contributions by the riverboat and land-based casino industries are unconstitutional. Treasure Chest Casino, LLC ("TCC")[2] and two Harrah's entities, Harrah's Operating Company, Inc. and Harrah's Entertainment, Inc. (jointly "Harrah's")[3], were permitted to intervene in the lawsuit in light of their respective interests in the laws that regulate the casino gaming industry.

Harrah's, TCC, CAL and its individual members are prohibited from making campaign contributions to candidates or to political committees of candidates by operation of La. R.S. 18:1505.2(L), which provides in pertinent part as follows:

> L. (1) The legislature recognizes that it is essential to the operation of effective democratic

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[1] CAL is a corporation which represents the interests of the owners and operators of riverboat casinos within this state.

[2] TCC is a member of CAL and is licensed by the State to conduct riverboat gaming operations upon its licensed riverboat located in Kenner, Louisiana.

[3] Harrah's, through certain subsidiaries, is authorized to conduct riverboat gaming operations upon three licensed riverboats, one of which is located in Shreveport, Louisiana, and two of which are located in Lake Charles, Louisiana, and also owns a 49% interest in JCC Holding Co., the sole member of the land-based casino gaming operator, Jazz Casino Company LLC ("JCC").

government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

. . .

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act [La. R.S. 27:41 *et seq.*], and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as

a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act [La. R.S. 27:201 *et seq.*], and any person who owns a casino where such gaming operations are licensed.

. . .

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest," as defined in this Subparagraph, means ownership by an individual or spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more or each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

. . .

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

Following a hearing, the district court, Judge Timothy Kelley presiding, declared La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii), unconstitutional. The court also declared unconstitutional a corresponding provision of the Louisiana Administrative Code, 42 LA-ADC Pt. IX, § 2941, insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies, and all of their officers, directors, partners, senior management, and key employees. In support, the district court relied upon the reasoning of the majority of this Court in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, *cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000), which declared unconstitutional provisions of La. R.S. 18:1505.2(L) barring campaign contributions by the video poker industry. The State has appealed the district court's judgment directly to this Court pursuant to La. Const. Art. V, § 5(D).

DISCUSSION

In *Penn,* in a four-three per curiam decision, this Court declared unconstitutional La. R.S. 18:1505.2(L)(3)(a)(i), La. R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to La. R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees.[4] For the reasons that follow,

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[4] In *Penn,* Chief Justice Calogero, Justices Kimball and Johnson, and former Justice Harry Lemmon, issued concurring opinions and the

(Continued on following page)

we decline to follow *Penn* and hold that the legislative bans on campaign contributions by riverboat gaming and land-based casino interests do not violate the First and Fourteenth Amendments to the United States Constitution.[5]

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. Amend. I. The Fourteenth Amendment makes this most important guarantee applicable to the states as well as the Congress. *Buckley v. Valeo* is the seminal United States Supreme Court case on modern campaign finance reform in the context of the First Amendment. 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). In reviewing the contribution[6] and expenditure[7] limits contained in the 1974 amendments to the Federal Election Campaign Act of

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author of this opinion and Justices Traylor and Knoll issued dissenting opinions.

[5] The per curiam opinion in *Penn* noted that while other sections of La. R.S. 18:1505.2(L) also prohibit certain persons from contributing to candidates and political committees of candidates, those sections were not under attack in *Penn* and therefore *Penn* did not consider the validity of those provisions. 751 So.2d at 824, n. 2.

[6] The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office;" or "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. 431(8).

[7] The Act defines an "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A)(i). An "expenditure" is also a "written contract, promise, or agreement to make an expenditure."

1971 (the "Act"),[8] the *Buckley* Court made clear that restrictions on campaign contributions and expenditures "operate in an area of the most fundamental First Amendment activities," namely, the rights of freedom of association and freedom of expression. 424 U.S. at 14, 96 S.Ct. 612. In discussing the Act's impact on the First Amendment's guarantee of freedom of expression, the Court distinguished between expenditure restrictions and contribution restrictions, characterizing expenditure restrictions as follows:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. . . .
>
> The *expenditure limitations* contained in the Act represent *substantial rather than merely*

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[8] The statutes at issue, Federal Election Campaign Act of 1971, 86 Stat. 3, as amended by the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, contained the following provisions: individual political contributions are limited to $1,000 to any single candidate per election, with an overall annual limitation of $25,000 by any contributor; independent expenditures by individuals and groups "relative to a clearly identified candidate" are limited to $1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits; contributions and expenditures above certain threshold levels must be reported and publicly disclosed.

> *theoretical restraints* on the quantity and diversity of political speech. . . . (Emphasis added).

424 U.S. at 19, 96 S.Ct. 612.[9]

In discussing restraints on contributions in the context of freedom of expression rights, the Court held:

> By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails *only a marginal restriction upon the contributor's ability to engage in free communication.* A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the

[9] Accordingly, the Court held that the constitutionality of the Act's expenditure ceilings turned "on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression" and held that the expenditure ceilings were unconstitutional because they "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." *Id.*, 424 U.S. at 46, 58-59, 96 S.Ct. 612.

> symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor. (Emphasis added).

Id., 424 U.S. at 21, 96 S.Ct. 612.[10] The Court made the distinction again later in the opinion when noting that "unlike a person's contribution to a candidate, a candidate's expenditure of his personal funds directly facilitates his own political speech." *Id.*, 424 U.S. at 53, n. 58, 96 S.Ct. 612; *see also California Medical Ass'n v. Federal Election Comm'n,* 453 U.S. 182, 196, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981) (Plurality Opinion) (limits on the amounts a group may contribute to a multi-candidate political committee is "speech by proxy" and "is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection"); *cf. Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 105 S.Ct. 1459, 84 L.Ed.2d 455

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[10] In *Brown v. State ex rel. Department of Pub. Safety and Corrections,* this Court held that the provisions of La. R.S. 27:13(C)(6), which prohibited members or employees of the Louisiana Gaming Control Board from making contributions to committees supporting or opposing issues, i.e., independent expenditures not linked to a candidate, were unconstitutional. 96-2204 (La.10/15/96), 680 So.2d 1179 (Victory, J., not on panel). While a prohibition in La. R.S. 27:13(C)(6) regarding campaign contributions to a candidate was not at issue in *Brown,* this Court made clear that "there is a fundamental constitutional difference between money spent to advertise views and money contributed to a candidate." *Id.* at 1182.

(1985) (holding expenditure limitations on political committees unconstitutional and noting that "there is a fundamental constitutional difference between money spent to advertise views and money contributed to a candidate"); *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996) (*Colorado I*) (holding that spending limits were unconstitutional as applied to political groups independent expenditures in connection with a senatorial candidate, making explicit the distinction between expenditures coordinated with a candidate and independent expenditures); *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001) (*Colorado II*) (holding that a political party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of contribution limits).

The Court in *Buckley* also held that the Act's contribution and expenditure limits "impinge on protected associational freedoms," as follows:

> Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permits associations and candidates to aggregate large sums of money to promote effective advocacy.

Id., 424 U.S. at 22-23, 96 S.Ct. 612.

Thus, in addressing the contribution limitations, the Court held that the "*primary* problem raised by the Act's contribution limitations is their restriction of *one aspect* of the contributor's freedom of political association." *Id.*, 424 U.S. at 24, 96 S.Ct. 612 (emphasis added).

In discussing the appropriate standard of review to be used to determine whether the contribution limitations violated the contributor's freedom of political association rights, the *Buckley* Court held:

> In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP v. Alabama,* [357 U.S. 449, 460-461, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)]. Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." *CSC v. Letter Carriers,* 413 U.S. 548, 567 [93 S.Ct. 2880, 37 L.Ed.2d 796] (1973). Even a "significant interference with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *Cousins v. Wigoda,* [419 U.S. 477, 488, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975)]; *NAACP v. Button,* [371 U.S. 415, 438, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)]; *Shelton v. Tucker,* 364 U.S. 479, 488 [81 S.Ct. 247, 5 L.Ed.2d 231] (1960).

Id., 424 U.S. at 25, 96 S.Ct. 612.[11] The Supreme Court has recently identified further reasons for the differing standards of review that the Court applies to restrictions on political expenditures and political contributions as follows:

> Spending for political ends and contributing to political candidates both fall within the First Amendment's protection of speech and political association. *Buckley,* 424 U.S. at 14-23, 96 S.Ct. 612. But ever since we first reviewed the 1971 Act, we have understood that limits on political expenditures deserve closer scrutiny than restrictions on political contributions. *Ibid; see also, e.g., Shrink Missouri,* 528 U.S. at 386, 120 S.Ct. 897; *Colorado I, supra,* at 610, 614-615, 116 S.Ct. 2309; *Massachusetts Citizens for Life,* 479 U.S. at 259-260, 107 S.Ct. 616. Restrictions on expenditures generally curb more expressive and associational activity than limits on contributions do. *Shrink Missouri, supra,* at 386-388, 120 S.Ct. 897; *Colorado I, supra,* at 615, 116 S.Ct. 2309;

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[11] The Court in *Shrink Missouri, infra,* explained the standard of review as it applied to the correlative speech and association rights as follows:

> While [in *Buckley*] we did not attempt to parse distinctions between the speech and association standards of scrutiny form contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on freedom to speak. 424 U.S. at 24-25, 96 S.Ct. 612. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review.

528 U.S. at 388.

> *Buckley,* 424 U.S. at 19-23, 96 S.Ct. 612. A further reason for the distinction is that limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of unlimited political spending are (corruption being understood not only as quid pro quo agreements, but also as undue influence on an officerholder's judgment, and the appearance of such influence, *Shrink Missouri, supra,* at 388-389, 120 S.Ct. 897). At least this is so where the spending is not coordinated with the candidate or his campaign. . . .
>
> Given these differences, we have routinely struck down limitations on independent expenditures by candidates, other individuals, and groups, *see Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 490-501, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985) (political action committees); *Buckley, supra,* at 39-58, 96 S.Ct. 612 (individuals, groups, candidates, and campaigns), while repeatedly upholding contribution limits, *see Shrink Missouri, supra* (contributions by political action committees); *California Medical Assn. v. Federal Election Comm'n,* 453 U.S. 182, 193-199, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981) (contributions by individuals and associations); *Buckley, supra,* at 23-36, 96 S.Ct. 612 (contributions by individuals, groups, and political committees).

Colorado II, supra, 533 U.S. at 440, 121 S.Ct. 2351.

In applying that standard of review and in upholding the constitutionality of the contribution limitations, the *Buckley* Court found that the Act's primary purpose of limiting the actuality and appearance of corruption resulting from large individual financial contributions was a

constitutionally sufficient justification for the limitations. Specifically, the Court held that "[t]o the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined," and that "[o]f almost equal concern as the danger of actual quid pro quo arrangements in the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.*, 424 U.S. at 26-27, 96 S.Ct. 612. The Court opined that "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Id.* (Citing *CSC v. Letter Carriers, supra,* 413 U.S. at 565, n. 29, 93 S.Ct. 2880).

In *Penn,* wherein a majority of this Court declared unconstitutional provisions of La. R.S. 18:1505.2(L) that barred campaign contributions by the video poker industry, the common thread among the four concurring opinions is the authors' beliefs that *Buckley* identified only a "single narrow exception" to the rule that limits on political activity are contrary to the First Amendment, and that, because the statutes at issue "prohibited" rather that [sic] "limited" the contributions, they did not fit into the "exception" and were therefore unconstitutional. *See, Penn, supra* (Concurring Opinion of Chief Justice Calogero at 833, 834; Concurring Opinion of Justice Johnson at 827, 831; Concurring Opinion of former Justice Lemmon at 839; Concurring Opinion of Justice Kimball at 840). These concurrences base their reasoning on language in *Buckley* that emphasized that the contribution limitation was only a "marginal restriction" because it still permitted "the

symbolic expression of support evidenced by a contribution" even if the contribution would not be a significant one. Thus, they reasoned, because the statutes at issue in *Penn,* like in this case, prohibit contribution, they did not allow a "symbolic expression of support" and were therefore unconstitutional.

What the majority of the court in *Penn* failed to realize is that under La. R.S. 18:1505.2(L), as pointed out by the Attorney General's office and the Counsel for the Supervisory Committee on Campaign Finance Disclosure in their brief to this Court, the parties prohibited from making campaign contributions to a candidate or political committee of a candidate can still make *unlimited independent expenditures* supporting or opposing a candidate. This allows much more room for political expression and association than the statute involved in *Buckley,* where the statute also limited campaign expenditures. In this case, there is no need to resort to finding a right to "the symbolic expression of support evidenced by a contribution," however small, to save this statute from the doom of unconstitutionality, as these parties still have the full right to political expression and association by making unlimited political expenditures in favor of the candidate of their choice. In addition, they have the same rights the Court recognized as significant in *Buckley,* i.e., they can still become a member of a political association and personally assist in the association's effort on behalf of candidates; they can still urge their employees to support or oppose particular candidates; they may still openly support individual candidates by displaying yard signs and voluntarily working in political campaigns; and they may sponsor phone banks to encourage persons to vote.

Furthermore, there is no indication in *Buckley* that a contribution limit of zero, as opposed to a contribution limit of $1,000.00, would be unconstitutional. In fact, since *Penn,* the United States Supreme Court has clarified and explained the holding in *Buckley,* and has specifically addressed the issue of what limit would possibly be too low to withstand constitutional scrutiny. In *Nixon v. Shrink Mo. Gov't PAC,* the Court held that *Buckley* was authority for state limits on contributions to state political candidates but that the state limits did not need to be "pegged to *Buckley's* dollars." 528 U.S. 377, 381, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000).[12] The *Shrink Missouri* court clearly stated that "[i]n *Buckley,* we specifically rejected the contention that $1,000 *or any other amount,* was a constitutional minimum below which the legislatures could not regulate." *Id.,* 528 U.S. at 397, 120 S.Ct. 897 (emphasis added). The Court set out the proper standard for determining when a minimum might be too low to withstand constitutional scrutiny as follows:

> As indicated above, [in *Buckley*] we referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to "amass the resources necessary for effective advocacy." 424 U.S. at 21, 96 S.Ct. 612. We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of

[12] *Shrink Missouri* involved a Missouri statute which imposed contribution limits ranging from $250 to $1,000, subject to adjustment each even-numbered year based [sic] the cumulative consumer price index.

> notice, and render the contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to mount a campaign with all the dollars likely to be forthcoming.

Id. Unlike the across-the-board restrictions involved in *Buckley* and *Shrink Missouri,* the restrictions in this case involve just one licensed land-based casino and 15 licensed riverboat gaming facilities throughout Louisiana. Thus, clearly, in this case, the ban will have a very minimal effect on the candidates' ability "to amass the resources necessary for effective advocacy." *Id.*

We must also point out that seven other states have enacted statutes that *prohibit* campaign contributions by certain gaming interests.[13] Further, three other states' appellate courts that have considered whether a complete prohibition on campaign contributions, rather than a monetary limitation, is constitutional in light of *Buckley* have answered in the affirmative. *State v. Alaska Civil Liberties Union,* 978 P.2d 597 (Alaska 1999), *cert. denied,*

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[13] Indiana, Ind. Stats. 4-33-10-2.1 (prohibits contributions from any officer or person who holds an interest in a gaming entity); Iowa, Iowa Stats. 99F.6(4)(a) (prohibits contributions from riverboat gambling corporations); Kentucky, Rev. Stats. 154(a).160 (prohibits contributions from persons owning lottery contracts); Michigan, Mich. Stats. 7(b)(4)-(5) (prohibits contributions from any licensee or person who has an interest in a gaming entity); Nebraska, Neb. Stats. 49-1469.01 (prohibits contributions from lottery contractors for duration of contract and three years after); New Jersey § 5:12-138 (prohibits contributions from casino officers or key employees); Virginia, § 59.1-375, 376 (prohibits contributions from pari-mutual corporations, executives and their spouses and families).

528 U.S. 1153, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000) (upholding complete ban on campaign contributions by out-of-district lobbyists); *In re Petition of Soto,* 236 N.J.Super. 303, 565 A.2d 1088 (1989), *certif. denied,* 121 N.J. 608, 583 A.2d 310 (1990), *cert. denied,* 496 U.S. 937, 110 S.Ct. 3216, 110 L.Ed.2d 664 (1990) (upholding New Jersey's complete ban on campaign contributions by gaming interests; Louisiana's statute is based on this, *see* pp. 506-507, *infra*);[14] *Schiller Park Colonial Inn, Inc. v. Berz,* 63 Ill.2d 499, 349 N.E.2d 61 (1976) (upholding complete ban on campaign contributions by liquor licensees or their representatives).[15] In addition, two federal courts have upheld complete bans on campaign contributions by lobbyists, both holding that the fact that the contribution restrictions were bans, rather that [sic] monetary limits, did not render them unconstitutional

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[14] In *Petition of Soto,* a casino employee challenged the constitutionality of a New Jersey statute that prohibited any casino key employee from contributing any money or thing of value to any political candidate or committee of any political party. In holding the statute constitutional, the court found a compelling state interest in preventing the appearance of impropriety given the "acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry but also the governmental process which so closely regulates it." 565 A.2d at 1098. In addition, the court found that the statute had been narrowly drawn and precisely tailored, commenting that gambling "is an activity rife with evil" and that it was the pronounced policy of the State "to regulate and control the casino industry with the utmost strictness." *Id.*

[15] Other courts have also upheld campaign contribution restrictions of certain regulated industries and professions. See *Blount v. SEC,* 61 F.3d 938, 941-48 (D.C.Cir.1995) (upholding regulation restricting ability of municipal securities professionals to contribute to or solicit contributions for political campaigns of elected officials from whom they may obtain business);

under *Buckley. North Carolina Right to Life, Inc. v. Bartlett,* 168 F.3d 705 (4th Cir.1999), *cert. denied,* 528 U.S. 1153, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000); *Inst. of Governmental Advocates v. Fair Political Practices Comm'n,* 164 F.Supp.2d 1183 (E.D.Cal.2001). Finally, corporate contributions to candidates and candidate committees have long been prohibited completely at the federal level. 2 U.S.C. § 441b(a). Twenty-two states also ban corporate contributions. *See, generally,* Chart 2A, Federal Election Commission, E. Feigenbaum & J. Palmer, Campaign Finance Law 98 (1998).

Thus, contrary to the concurring opinions' viewpoints that carried the day in *Penn,* we find the fact that the campaign contribution ban found in La. 18:1505.2(L)(2) is a *prohibition* on contributions, rather than a *limitation,* does not render it per se unconstitutional under *Buckley.* Instead, the restriction is to [sic] analyzed under the burden of proof enunciated in *Buckley,* as clarified in [sic] by later Supreme Court cases, i.e., "that a contribution limit involving 'significant interference' with associational rights, could survive if the Government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest . . . " *Shrink Missouri,* 528 U.S. at 387-388, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 25, 96 S.Ct. 612).

In order to conduct this analysis, we must get to the heart of the matter, the history of gambling in Louisiana. This history was ably explained by Justice Knoll in her dissent in *Penn:*

> The Louisiana Constitution of 1879 declared gambling a "vice" and the Legislature was directed to enact laws for its suppression. LA.

CONST. art. 172 (1879). Louisiana's Constitutions of 1898, 1913, and 1921 all contained similar provisions regarding gambling. See LA. CONST. art. 19, Sec. 8 (1921); LA. CONST. arts. 178, 188, 189 (1913); LA. CONST. arts. 178, 188, 189 (1898). Although the delegates to the Constitutional Convention which convened on January 5, 1973, eliminated the moral condemnation of gambling and chose to suppress gambling rather than prohibit it, it is clear that the Legislature continued its role of defining gambling. *Polk v. Edwards,* 626 So.2d 1128, 1141 (La.1993). Thus, the Louisiana electorate ratified the Constitution of 1974 which followed its predecessor documents with the inclusion of article XII, Sec. 6(B) that "gambling shall be defined by and suppressed by the Legislature." In order to understand the reasons for these constitutional declarations throughout the period of Louisiana's statehood, reference to the history of gambling in this State is essential.

Historically, gambling has been recognized as a vice activity which poses a threat to public health and public morals. Although the vice of gambling existed throughout the State during the eighteenth and nineteenth centuries, New Orleans was recognized as the gambling capital. See Timothy L. O'Brien, *Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry* (1998). The State outlawed gambling in 1812, but New Orleans received a special exemption that allowed gambling to continue.

When federal troops occupied New Orleans from 1862 to 1877, the Louisiana Lottery Company, a private corporation, went into business. O'Brien, *supra,* at 105-106. Even though the Constitution

had previously declared lotteries illegal, a constitutional amendment was passed in 1866 and the Louisiana Lottery Corporation was given a 25-year charter to operate. *Id.* The Lottery was marketed nationwide via the mail and branch offices and by 1890 was taking in $28 million yearly. *Id.* at 106-107. Lottery proceeds not only paid for the first waterworks in New Orleans, but this lucre supported the New Orleans charity hospital and upgraded the public schools. *Id.* at 107; Stephanie A. Martz, *Note, Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks,* 13 J.L. & Pol. 453, 458-59 (1997). In 1893, the federal government intervened in the Louisiana Lottery and passed a law prohibiting any form of lottery sales and promotion. Martz, *supra* at 459.

Gambling remained available in New Orleans during the first decades of the twentieth century in small establishments around the city, even though the Constitution had outlawed all gambling. O'Brien, *supra,* at 108. In 1934, Huey P. Long allowed slot machines in New Orleans and several casinos outside the city. *Id.* In the 1950s a reform movement ran the larger casinos away, but the slot machines and back-alley casinos stayed in business until the 1970s. *Id.* at 109.

With the boom of the petrochemical industry during the 1970s and 1980s, the State's economy was revitalized. *Id.* There was no longer a need for gambling proceeds to fund government projects, that is until the bottom fell out of the oil industry. *See Id.* However, when the State's economy went into a tailspin with the decline in the oil industry, the State Legislature, armed with its constitutional authority to "define gambling,"

turned to legalized gambling as a means out of the fiscal doldrums. *See Id.* In a series of enactments in 1991 and 1992, the Legislature passed four acts providing for the licensing of gaming, to-wit: at a land-based casino in New Orleans, La. R.S. 4:601-686; on cruise ships operating out of New Orleans, La. R.S. 14:90(B); on river boats operating on designated rivers in the state, La. R.S. 4:501-562; and by means of video poker machines located throughout the State, La. R.S. 33:4862.1-19.

In *Polk,* although this Court upheld the power of the Legislature to provide for the licensing of gaming, it further recognized that the Legislature's authority to regulate gambling constitutes a legitimate exercise of police power. *Id.* at 1137; see also *Theriot v. Terrebonne Parish Police Jury,* 436 So.2d 515, 516 (La.1983); *State v. Mustachia,* 152 La. 821, 94 So. 408 (1922); *Ruston v. Perkins,* 114 La. 851, 38 So. 583 (1905). "Defining and prescribing means of suppression are left to the state Legislature and the legislative determination in this regard constitutes an appropriate exercise of police power for the protection of the public." *Theriot,* 436 So.2d at 521. Moreover, in *Polk* this Court further held that the power to suppress gambling and "to determine how, when, where, and in what respects gambling shall be prohibited or permitted" has been constitutionally delegated to the Legislature. *Polk,* 626 So.2d at 1128.

In 1996, the Legislature, pursuant to its constitutional mandate to define and suppress gambling, enacted the Louisiana Gaming Control Law, La. R.S. 27:1-:392. From the outset, the legislation announced the public policy of this State

concerning gaming. In La. R.S. 27:2(A), the Legislature stated:

> The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements. The legislature further finds and declares it to be the public policy of the state that to this all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be strictly regulated.
>
> This legislation further declared that any license, casino operating contract, permit, approval, or thing obtained or issued pursuant to the provisions of this Title or any other law relative to the jurisdiction of the board is expressly declared by the legislature to be a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana.

La. R.S. 27:2(B); *see also Catanese v. Louisiana Gaming Control Bd.*, 97-1426 (La.App. 1 Cir. 5/15/98), 712 So.2d 666, 670, *writ denied*, 98-1678 (La.10/09/98), 726 So.2d 30; *Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div.*,

> 97-0121 (La.App. 1 Cir. 2/20/98), 710 So.2d 799, 807, *writ denied,* 98-0780 (La.5/8/98), 719 So.2d 51.
>
> In the same legislative session, the Legislature enacted La. R.S. 18:1505.2(L) relative to campaign finance.

Penn, supra at 849 (Knoll, J., dissenting).

With this background in mind, the legislative intent behind the enactment of this statute can be easily gleaned from the legislative committee meeting notes. *See* Committee on Senate and Governmental Affairs, Verbatim Transcript Meeting of March 26, 1996, Senate Bill 12 by Senator Dardenne. Senator Dardenne introduced the bill with the following information:

> . . . we're attempting to track as well in this legislation what was done in New Jersey [an obvious reference to the *Soto* case] which is the only state we know of that has imposed a statutory ban on gambling contributions.
>
> . . .
>
> . . . I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen . . . .
>
> . . .
>
> . . . I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying

> to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state. . . . it is directed to [sic] specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.
>
> . . .
>
> . . . I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political contributions.

Id.

As stated in *Shrink Missouri,* the Court in *Buckley* found "the prevention of corruption and the appearance of corruption" to be a "constitutionally sufficient justification" for campaign contribution restrictions. 528 U.S. at 388, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 25-26, 96 S.Ct. 612). The obvious purpose behind the statute at issue

in this case is the prevention of corruption and the appearance of corruption by the gaming industry upon the political process, and under *Buckley* and *Shrink Missouri,* this is a constitutionally sufficient justification for the campaign contribution restrictions.

The gaming interests argue that the statute is unconstitutional because it has an unlawful purpose, as stated in the statute, "to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests." La. R.S. 18:1505.2(L)(2). They argue that preventing "influence" or the "appearance of influence" is not a recognized legitimate governmental interest under *Buckley* and its progeny. However, a clear reading of the statute in light of the history of gambling in this State along with the legislative history of the statute leaves no doubt that the purpose of the statute is to prohibit the corruption and appearance of corruption which the legislature has determined will not be permitted in the highly regulated gaming industry. As the Court explained in *Shrink Missouri:*

> In speaking of "improper influence" and "opportunities for abuse" in addition to "quid pro quo arrangements," we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind our recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery.

Shrink Missouri, supra at 389, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 28, 96 S.Ct. 612).[16]

The gaming interests also argue that the government's burden to show that a speech restriction actually advances the asserted governmental interest is not satisfied by mere speculation or conjecture, and that instead, the government must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree. This proposition was also offered by Justice Johnson in support of her concurring opinion in *Penn.* However, *Shrink Missouri* specifically rejected this proposition in the context of campaign contribution restrictions, holding that "as to [what is necessary as a minimum evidentiary showing], respondents are wrong in arguing that in the years since *Buckley* came down we have 'supplemented' its holding with a new requirement that governments enacting contribution limits must 'demonstrate that the recited harms are real, not merely conjectural . . . '" *Id.,* 528 U.S. at 391-92, 120 S.Ct. 897. The Court held that "the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Id.*

Evidence provided to the trial court in this case included affidavits outlining the public perception that

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[16] *See also Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 497, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985) ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns").

gaming is associated with political corruption, information that within the last ten years, nine states (including Louisiana) have prosecuted governmental officials in gaming cases, and statistics showing the staggering sum of money collected by those within the gaming industry. This evidence illustrates why the legislature found it was imperative to prohibit campaign contributions from persons engaged in the gaming industry. Given the history of the gaming industry and its connection to public corruption and the appearance of public corruption, it is completely plausible, and not at all novel, for the Louisiana legislature to have concluded that it was necessary to distance gaming interests from the ability to contribute to candidates and political committees which support candidates. *See also Shrink Missouri,* 528 U.S. at 390, 120 S.Ct. 897 ("*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible").

The United States Supreme Court has also repeatedly rejected the gaming interests' argument that the statute is not "closely drawn" to support a sufficiently important government interest because there are less restrictive measures on the books, such as contribution limits,[17] disclosure laws[18] and anti-bribery statutes, that would solve the problem that this more restrictive statute seeks to address. The *Buckley* Court rejected the argument that the contribution limits must be invalidated because bribery laws and narrowly drawn disclosure requirements

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[17] La. R.S. 18:1505.2(H)(1)(a).

[18] La. R.S. 18:1482 *et seq.*

constitute a less restrictive means of dealing with the problem, finding that bribery laws only criminalize the most blatant attempts to influence governmental action and that Congress was entitled to conclude that the disclosure provisions were only a partial measure. *Buckley, supra,* 424 U.S. at 27-28, 96 S.Ct. 612. The Court concluded that the Act's contribution limitation "focuses precisely on the problem of large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Id.; see also Shrink Missouri, supra,* 528 U.S. at 396, 120 S.Ct. 897; *California Medical Ass'n, supra,* 453 U.S. at 199, n. 20, 101 S.Ct. 2712 (concluding that a limit on the amount that unincorporated associations could contribute to political committees was not required to be the least restrictive means of accomplishing the intent of the statute and that Congress could have reasonably concluded that the statute was a useful supplement to other anti-fraud provisions).

For the same reasons, we also reject the gaming interests' argument that the statute serves no legitimate purpose because other statutes, such as La. R.S. 27:310(B)-(C) already impose rigorous background checks and strict licensing restrictions on gaming interests, guaranteeing that anyone who obtains a gaming interest is "suitable" and honest.

Further, we note that there are significant differences between the video poker industry, as addressed in *Penn,*

and the riverboat and land-based casino gaming industries. For example, there are no limits on the number of persons who may be licensed to operate video poker in this state. In contrast, the Legislature has authorized only a single land-based casino and only 15 riverboats. La. R.S. 27:241 and 27:65. Another notable distinction is that the prohibitions at issue in *Penn* did not apply equally to all persons engaged in the video poker industry. *Penn, supra* at 830 (Johnson, J., concurring). In contrast, the restrictions applicable to those involved in the riverboat and land-based casino gaming industries are uniform.

CONCLUSION

Restrictions on campaign contributions operate in an area protected by the First Amendment, particularly the right of freedom of association. However, a campaign contribution restriction, including a complete ban on campaign contributions, can withstand constitutional scrutiny if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. Thus, under *Buckley* and its progeny, we find that the campaign contribution restrictions on the riverboat and land-based casino gaming industries are closely drawn to match a sufficiently important interest in that they focus precisely on the problem of campaign contributions by the gaming industry – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving such persons free to engage in independent political expression, to associate actively

through volunteering their services, and to assist to a substantial extent in supporting candidates and committees by making independent expenditures.[19] Therefore, we find that the provisions of La. R.S. 18:1505.2(L) which prohibit riverboat and land-based casino gaming interests from making campaign contributions to candidates or to political committees of candidates do not violate the First Amendment.[20]

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[19] Having found no First Amendment violation in the provisions of La. R.S. 18:1505.2(L) which prohibit riverboat gaming and land-based casino interests from making campaign contributions, we need not address the argument that the statute conflicts with the "doctrine of unconstitutional conditions." *See 44 Liquormart v. Rhode Island,* 517 U.S. 484, 513, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996).

[20] The riverboat and land-based casino gaming interests also argue that the statutes at issue are violative of the equal protection clause of the Fourteenth Amendment. They argue that the statute respects the right of some persons to associate and speak in support of political candidates, but strips that right from others, i.e., those who work in the gaming industry. The trial court did not address this issue, specifically stating "[h]aving found that La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional [under the First and Fourteenth Amendments], there is no need for this Court to address the Equal Protection arguments of the parties."

Article V, Section 5(F) of the Louisiana Constitution provides that if the Supreme Court has appellate jurisdiction under Section 5, then that jurisdiction *may* extend over all issues involved in the civil action before it. "However, this Court has repeatedly interpreted Article V, Section 5(F) to mean that our appellate jurisdiction does not extend over *all* issues raised in the plaintiff's petition, but only those on which the trial court has ruled." *Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance,* 98-0601 (La.10/20/98), 720 So.2d 1186, 1199; *Church Point Wholesale Beverage Co. v. Tarver,* 614 So.2d 697 (La.1993). Accordingly, because the trial court specifically did not rule on the allegation that the statute at issue violated the equal protection clause

(Continued on following page)

DECREE

For the foregoing reasons, we reverse the judgment of the trial court and uphold the constitutionality of La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii), as well as 42 LA ADC Pt. IX, § 2941, insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies, and all of their officers, directors, partners, senior management and key employees.

REVERSED.

CALOGERO, C.J., dissents and assigns reasons.

KIMBALL, J., dissents and assigns reasons.

JOHNSON, J., dissents and assigns reasons.

CALOGERO, Chief Justice, dissents and assigns the following reasons:

I dissent from the majority's disposition upholding the constitutionality of the certain provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions from the riverboat and land-based casino industry because I find this case indistinguishable from our recent decision in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, *cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000), in which we declared unconstitutional certain provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions by the video poker industry. The

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of the Fourteenth Amendment, this Court is without jurisdiction under Article V to rule on this issue on direct appeal.

provisions at issue in this case, like the provisions at issue in *Penn,* are an absolute prohibition to candidate and political committee contributions by casinos, not merely a limit on such contributions. The provisions thus entirely disallow the symbolic act of contribution. Therefore, as the majority of this court found in *Penn,* I find in this case that the contested provisions' complete prohibition of contributions is more than merely a "marginal restriction" on the casino's First Amendment rights as allowed by *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and therefore cannot be outweighed by the government's interest in preventing "political corruption."

Furthermore, I do not believe that the United State's Supreme Court's more recent decision of *Nixon v. Shrink Missouri Government PAC,* 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), is applicable to this case. I disagree with the majority that *Shrink Missouri* sets out the burden of proof that the government must meet in analyzing this particular restriction on campaign contributions. *Shrink Missouri* involved a "contribution limit," not a contribution prohibition, a critical distinction recognized by this court in *Penn.*

Although the majority attempts to distinguish this case from *Penn,* I do not believe a significant distinction exists, and therefore, I believe that the majority's decision effectively overrules our prior jurisprudence on this issue. Because I believe our decision in *Penn* is correct, I respectfully dissent from the majority's decision, and I would find unconstitutional the provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions by the riverboat and land-based casino industry.

KIMBALL, Justice, dissenting.

Because I continue to adhere to the view expressed in my concurrence in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, 839 (Kimball, J. concurring), I dissent from the majority's conclusion that the provisions at issue are constitutional. Like the provisions held unconstitutional in *Penn,* the instant prohibitions illegally infringe on protected First Amendment rights.

In stark contrast to the laws at issue in *Nixon v. Shrink Missouri Gov't PAC,* 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) and *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam), which dealt with *limits* on campaign contributions, the challenged provisions in the case at bar deal with *absolute prohibitions* on campaign contributions made by certain targeted persons. In *Shrink Missouri,* a case decided after this court rendered its decision in *Penn,* the U.S. Supreme Court quoted language from *Buckley* explaining that a contribution *limit* only marginally restricts a contributor's ability to engage in free communication because while a contribution serves as a general expression of support for the candidate and his views, it does not communicate the underlying basis for the support. *Shrink Missouri,* 528 U.S. at 386, 120 S.Ct. at 903. Further, the *Shrink Missouri* Court quoted *Buckley* for the proposition that

> [t]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political

> communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

Shrink Missouri, 528 U.S. at 386-87, 120 S.Ct. at 903-4 (quoting *Buckley,* 424 U.S. at 20-21, 96 S.Ct. at 635-36). Thus, a contribution limit leaves communication significantly unimpaired. *Shrink Missouri,* 528 U.S. at 387, 120 S.Ct. at 904. Clearly, the *Shrink Missouri* Court did not diminish the importance of the symbolic expression evidenced by a contribution of any amount.

Contribution limits also impinge on protected associational freedoms. *Shrink Missouri,* 528 U.S. at 387, 120 S.Ct. at 904; *Buckley,* 424 U.S. at 22, 96 S.Ct. at 636. Justice Breyer, joined in his concurrence by Justice Ginsburg, noted that the statute upheld by the Court did not impose an absolute ban on contributions. Rather, Justice Breyer stated, it "imposes restrictions of degree. It does not deny the contributor the opportunity to associate with the candidate through a contribution, though it limits a contribution's size." *Shrink Missouri,* 528 U.S. at 401, 120 S.Ct. at 912 (Breyer, J. concurring). Such a statement identifies the difference between a law that limits contributions and one that absolutely prohibits them. In my view, a prohibition against campaign contributions by certain persons allows neither the "symbolic expression" evidenced by a contribution nor the affiliation with a candidate that a contribution allows. This amounts to a "difference in kind" rather than a "distinction in degree" when compared to the laws upheld in *Shrink Missouri* and *Buckley. See Penn,* 751 So.2d at 841 (Kimball, J. concurring).

The majority opinion treats in a cavalier manner the significance of the difference between laws that limit campaign contributions and those that prohibit such contributions. The majority notes that the parties prohibited from making contributions by the provisions at issue can still make unlimited political expenditures, personally assist in a political association's effort on behalf of candidates, urge their employees to support or oppose particular candidates, display yard signs, volunteer in political campaigns, and sponsor phone banks to encourage persons to vote. However, individuals might contribute funds to a candidate's campaign in part because they believe such a contribution is a more effective means of advocacy than spending the money on their own. *See FEC v. Massachusetts Citizens for Life,* 479 U.S. 238, 261, 107 S.Ct. 616, 629, 93 L.Ed.2d 539 (1986); *Beaumont v. FEC,* 278 F.3d 261, 274 (4th Cir.2002). Moreover, given the complete ban on contributions at issue in this case, it seems worthwhile to address the Supreme Court's pronouncement that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Spence v. State of Washington,* 418 U.S. 405, 411 n. 4, 94 S.Ct. 2727, 2731 n. 4, 41 L.Ed.2d 842 (1974) (quoting *Schneider v. State of New Jersey,* 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939)).

The majority correctly recites the standard of review to be used to determine whether the contribution limitations violate the contributor's First Amendment rights, *i.e.,* a contribution limit involving significant interference with associational rights can survive if the Government demonstrates that the contribution regulation is closely drawn to match a sufficiently important interest, but then

fails to accurately apply it to the facts at hand. Because the instant case involves a complete ban on contributions, the State's burden to show that the prohibitive laws are "closely drawn" becomes even more onerous. *Beaumont,* 278 F.3d at 276 ("Yet, when a limit becomes a ban, the burden of demonstrating that the regulation is closely drawn becomes that much more difficult."). In my opinion, the State fails to carry its burden, especially in light of the fact that persons subject to the contribution prohibition at issue are subject to the general contribution limits similar to those upheld in *Buckley* and *Shrink.* Additionally, the State has failed to show why a prohibition, rather than an even lower contribution cap than that allowed by the general law, is necessary.

For all the above reasons and for the reasons I expressed in my concurrence in *Penn,* I must dissent from the majority's holding that the contribution prohibitions at issue are valid.

JOHNSON, J., dissenting.

In *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823,[1] this court declared unconstitutional certain provisions of LSA R.S. 18:1505.2(L) which precluded campaign contributions by *video poker* licensees. Today, the majority has upheld the constitutionality of laws which prohibit *casino* licensees from making campaign contributions. For the reasons expressed in my concurrence in *Penn,* I respectfully dissent.

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[1] *Cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000).

In *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and more recently in *Nixon v. Shrink Missouri Gov't* PAC, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), the United States Supreme Court dealt with the issue of *limitations* on campaign contributions and expenditures. In *Buckley,* the Court stated:

> The [Federal Election Campaign] Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States,* 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957).... As the Court observed in *Monitor Patriot Co. v. Roy,* 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

Buckley, 424 U.S. at 14-15, 96 S.Ct. at 632.

As I stated in my concurring opinion in *Penn,* the "acceptance of a [gaming] license does not require the relinquishment of First Amendment rights to free speech and association." 751 So.2d 823, 831 (Johnson, J. concurring). Moreover, under *Buckley* and its progeny, an absolute ban on political contributions by any targeted group should not be allowed. In my mind, such prohibitions are

clearly violative of the First and Fourteenth Amendments to the United States Constitution.

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	:	**NUMBER 476, 565, DIVISION F**
VERSUS	:	**19TH JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	:	**PARISH OF EAST BATON ROUGE**
	:	**STATE OF LOUISIANA**

JUDGMENT

(Filed Oct. 30, 2001)

This matter came before the Court for a hearing on October 4, 2001. Representing the plaintiffs was Richard Stanley. R. Greg Sexton and Maris McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was Rand Dennis. Intervener, Harrah's Enterprises, was represented by Clifton Laborde. Representing intervener, Treasure Chest Casino, was Jay O'Brien.

After hearing the evidence and testimony, along with arguments of counsel, and for the written reasons set forth herewith;

The law and evidence being in favor of the plaintiffs and interveners;

IT IS HEREBY ORDERED that the judgment is rendered in favor of the plaintiffs and interveners, declaring La. R.S. 18:15005.2(L)(3)(a)(ii) and La. R.S. 18:1505.2 (L)(3)(b)(c)(e), insofar as they are applicable to La. R.S.

18:1505.2(L)(3)(a)(ii), are unconstitutional in that they violate the First and Fourteenth Amendments of the United States Constitution.

THUS DONE AND SIGNED this 30 day of October, 2001, at Baton Rouge, Louisiana.

/s/ T. Kelley
Judge Timothy E. Kelley

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	:	**NUMBER 476, 565, DIVISION F**
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STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	:	**PARISH OF EAST BATON ROUGE**
	:	**STATE OF LOUISIANA**

WRITTEN REASONS FOR JUDGMENT

(Filed Oct. 30, 2001)

This matter came before the Court for a hearing on October 4, 2001. Representing the plaintiffs was Richard Stanley. R. Greg Sexton and Maris McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was Rand Dennis. Intervener, Harrah's Enterprises, was represented by Clifton Laborde. Representing intervener, Treasure Chest Casino, was Jay O'Brien. Evidence was introduced, and the parties presented oral arguments. Whereupon, the court took the matter under advisement.

On September 20, 2000, the Casino Association of Louisiana, Inc. and its individual members instituted litigation seeking a declaratory judgment that La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2 (L)(3)(a)(ii), are unconstitutional in that they violated the

First and Fourteenth Amendment of the U.S. Constitution, the Equal Protection guarantees accorded by Article I, Section 3 of the Louisiana Constitution 1974, and Article I, Sections 7 and 9 of the Louisiana Constitution 1974. Harrah's Enterprises, along with Treasure Chest Casino, subsequently intervened in this matter due to their respective interests in the laws that regulate the gaming industry.

In a series of enactments in 1991 and 1992, the Legislature passed four acts providing for the licensing of gaming, providing: a land-based casino in New Orleans, La. R.S. 4:601-696; on cruise ships operating out of New Orleans, La. R.S. 14:90(B); on river boats operating on designated rivers in the state, La. R.S. 4:501-562; and by means of video poker machine [sic] located throughout the state, La. R.S. 33:4962.1-19. *Penn v. State of Louisiana,* 99-2337 (La. 10/29/99), 751 So.2d 823, 849. In 1996, the Louisiana Legislature altered its campaign-finance laws to forbid political contributions by certain classes of persons, labeled "special interests" in the state. The "Campaign Statute", La. R.S. 18:1505.2(L), prohibits political contributions by persons with casino or riverboat gaming interests.

The portions of La. R.S. 18:1505.2(L) applicable to the resolution of this matter provide:

> L. (1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special

interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this subsection is applicable as provided in Paragraph

(3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

* * *

(3) This Subsection shall be applicable to all of the following:

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each

legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

* * *

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

Central to any challenge to the constitutionality of a state statute are the fundamental principals that (1) the constitutionality of a statute is presumed, and that (2) the plaintiff bear the burden, through "clear and convincing evidence," of demonstrating that a Louisiana statute is repugnant to a particular section or phrase of either the State or Federal Constitution. *Polk v. Edwards,* 626 So.2d 1118 (La. 1993).

This matter considers what *Penn v. State of Louisiana* did not address, whether the prohibition on campaign contributions to individual candidates and committees by riverboat and land-based casinos is unconstitutional.

The plaintiffs and intervenors contend that the statute directly abridges the First Amendment freedom of speech by prohibiting a class of persons, namely the casino gaming industry, from contributing money to political candidates of their choice. Plaintiffs and intervenors look to *Penn v. State of Louisiana,* 99-2337 (La. 10/29/99), 751

So.2d 823, as support for their position. In *Penn,* plaintiffs and intervenors argue that the Louisiana Supreme Court held a virtually identical provision of the statute in question here, which prohibited citizens with video poker interests from contributing to political candidates, violated the First and Fourteenth Amendments. *Id.* at 824. The Supreme Court held that provisions of the Campaign Statute and its enabling regulations were facially unconstitutional insofar as they "preclude[d] candidate and political committee contributions by video poker licensees." *Id.* at 823.

The defendants maintain that *Penn* does not dictate this matter. The video poker industry, as addressed in Penn, is very dissimilar from the riverboat and land-based casino gaming industries. In video poker, there are no limits on the number of persons who may be licensed to operate in the state. By contrast, the legislature has authorized only a single land-based casino and fifteen riverboats. La. R.S. 27:247 and La. R.S. 27:65. Therefore, the significance of the participation in the political process by persons in the riverboat and land-based casino gaming industries is considerably enhanced.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The Fourteenth Amendment makes this guarantee applicable to the states as well as Congress. Strict scrutiny analysis applies to any regulation of First Amendment rights. *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 494 (1981) Laws curtailing the public's right to speak on matters of public concern are, therefore, subject to rigorous analysis under the "strict scrutiny" test. *Penn* at 827,

quoting *Perry Education Association v. Perry Local Educator's Association,* 460 U.S. 37, 45, 103 S.Ct. 948, 955. The First Amendment guarantees freedom of speech, which includes the expressive act of contributing money to political candidates, as well as freedom of association, *Buckley v. Valeo,* 424 U.S. 1, 14, 96 S.Ct. 612 (1976).

A restriction on political speech must be subjected to the most exacting scrutiny, thus, requiring a showing that the "regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Education Association v. Perry Local Educator's Association,* 460 U.S. at 45, 103 S.Ct. at 955. The United States Supreme Court has identified one compelling governmental interest that justifies restrictions on campaign financing: "to limit the actuality and appearance of corruption resulting from large individual financial contributions." *Penn* at 827, citing *Buckley,* 424 U.S. at 26, 96 S.Ct. at 638. The defendants in this matter argue that La. R.S. 18:1505.2(L) [sic] stated purpose is to "prevent influence and the appearance of influence of candidates" and therefore, satisfies a compelling government interest.

However, in *Brown,* the Louisiana Supreme Court stated that "[t]he corruption rationale only applies to candidate or candidate committee limitations." *Brown* at 1183, citing *Citizens Against Rent Control,* 454 U.S. at 297, 102 S.Ct. at 438. The Campaign Statute at issue is not merely restricting campaign contributions, but prohibiting contributions by the casino industry. Moreover, the defendants offered no support that the prohibitions in the Campaign Statute will prevent any corruption in the electoral process. In defending a regulation that abridges First Amendment interests, the government "must demonstrate that the recited harms are real, not merely

conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Penn* at 829, citing *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 664, 114 S.Ct. 2245, 2470, 129 L.Ed.2d 497 (1994).

As Chief Justice Calogero stated in *Penn,*

> "In sum, campaign contribution limits aimed at defeating corruption, as the Louisiana statutes [La. R.S. 18:1505.2(L)(a)(i) and La. R.S. 18:1505.2(L)(b)(i)] purport to do, must fit within the exception created by *Buckley* in order to pass constitutional muster. The exception created by *Buckley* permits the State to set reasonable *limits,* applicable to *all* persons, on campaign contributions, for the *sole* purpose of reducing corruption that may result when contributors give large financial contributions in exchange for political favors, *i.e.,* political quid pro quo arrangements. Otherwise, according to *Buckley* and its progeny, campaign contributions are a type of political expression protected by the First Amendment." *Penn* at 833.

The plaintiffs and intervenors maintain the State already has limitations on campaign contributions that would apply to casinos and anyone affiliated with them. Since 1981, Louisiana law has limited the size of campaign contributions that citizens may make to candidates for elective office. La. R.S. 18:1505.2(H)(1)(a). The contributions vary depending on the type of office. The limits range from $1,000 to $5,000. The plaintiffs and intervenors contend this limitation on contributions prevents corruption or the appearance thereof.

Furthermore, plaintiffs and intervenors aver the rigorous background checks and licensing restrictions the

State imposes on gaming interests are intended to address corruption in the gaming industry. In Louisiana, no person can be granted a gaming license without proving that he or she is "suitable." La. R.S. 27:310(B)(1). To be considered suitable, the person must prove that he or she is of "good character, honesty and integrity" and a person whose "prior activities, arrest or criminal record, reputation, habits and association are not a threat to the public interest of the state." La. R.S. 27:310(b)(1)(a) and (b). To stipulate that only honest people, as certified by the State, are eligible for licenses, and then turn around and argue these honest people cannot contribute to political candidates and campaigns because they are "corrupt" appear [sic] contradictory.

The fact that gambling may be characterized as a "vice" does not serve to lessen the First Amendment rights of those involved in its operation. *Penn* at 843. The State cannot justify an infringement on protected First Amendment rights by alleging that the protected rights relate to a "vice" activity when the State itself allow [sic] the so-called "vice" to exist. *Id* at 843. Once a state confers the benefit of legalization upon the gaming industry, it cannot require that industry to surrender its First Amendment rights. *Id* at 843, *44 Liquormart,*517 U.S. 484, 513, 116 S.Ct. 1495, 1513, 134 L.Ed.2d 711 (1996).

Finally, to refute the First Amendment protections afforded to political speech and association, the defendants assert that the speech in this matter is not direct speech, but "speech by proxy." In *Nixon v. Shrink Missouri Government PAC* 98-963, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), Justice Stevens, in his concurring opinion stated:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trial, [sic] on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

The defendants also assert there are ample opportunities for those in the gaming industry to fully develop their First Amendment rights in the political process other than through making campaign contributions to candidates or committees. The gaming entities may urge their employees to support or oppose a particular candidate. Additionally, corporate officers and employees may demonstrate their individual support of candidates by displaying yard signs and doing volunteer work on campaigns. However, in *Penn,* Justice Johnson provided, "Acceptance of a video poker license does not require the relinquishment of First Amendment rights to speech and association." *Penn* at 831. Following the reasoning in *Penn,* there is no basis for the prohibition on a First Amendment right simply because there are other avenues available.

This Court chooses to follow the *Penn* line of reasoning in determining the constitutionality of La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2 (L)(3)(a)(ii). The Campaign Statute amounts to an absolute ban on political contributions by the riverboat and land-based casinos operating in the State. "This absolute ban on political contributions by a particular segment of society goes far beyond what *Buckley* endorsed. The First Amendment simply does not allow the State to target

groups and exclude them from the political process." *Penn* at 831. Consequently, La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional under the First and Fourteenth Amendments of the United States Constitution.

Having found that La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional, there is no need for this Court to address the Equal Protection arguments of the parties.

THUS DONE AND SIGNED this 30 day of October, 2001, at Baton Rouge, Louisiana.

(Filed Oct. 30, 2001)

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	*	NUMBER 476,565 DIVISION F
VERSUS	*	19TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	*	PARISH OF EAST BATON ROUGE
	*	STATE OF LOUISIANA

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AMENDED JUDGMENT

(Filed Nov. 15, 2001)

This matter came before the Court for trial on October 4, 2001. Representing the plaintiffs was Richard C. Stanley. R. Gray Sexton and Maris LeBlanc McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was L. Rand Dennis. Intervenors, Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc., were represented by Cliffe E. Laborde III. Representing intervenor, Treasure Chest Casino, was Jay O'Brien.

After hearing the evidence and testimony, along with arguments of counsel, and for the written reasons set forth herewith;

The law and evidence being in favor of the plaintiffs and intervenors;

IT IS HEREBY ORDERED that judgment is rendered in favor of the plaintiffs and intervenors, declaring LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2 (L)(3)(b)(c)(e), insofar as they are applicable to LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and (iii), and 42 LA-ADC Pt. IX, § 2941 insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies and all of their officers, directors, partners, senior management and key employees to be unconstitutional in that they violate the First and Fourteenth Amendments of the United States Constitution.

THUS DONE AND SIGNED this 4th day of ~~November~~ December, 2001, at Baton Rouge, Louisiana.

/s/ T. Kelley
JUDGE TIMOTHY E. KELLEY

U.S. Const. Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

LA R.S. 18:1505.2

§ 1505.2. Contributions; expenditures; certain prohibitions and limitations

A. No person shall give, furnish, or contribute moneys, materials, supplies, or make loans to or in support of a candidate or to any political committee, through or in the name of another, directly or indirectly. This prohibition shall not apply to dues or membership fees of any membership organization or corporation made by its members of stockholders, if such membership organization or corporation is not organized primarily for the purpose of supporting, opposing or otherwise influencing the nomination for election, or election of any person to public office.

B. (1) No candidate, political committee, or other person required to file reports under this Chapter shall make any expenditure from funds the source of which is anonymous, and any contribution received by a candidate, political committee, or other person required to file reports under this Chapter from an anonymous source and deposited shall be reported as provided in R.S. 18:1491.7(B)(19) and R.S. 18:1495(B)(18) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

(2) Any single transaction involving the sale of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials, which transaction is for not in excess of twenty-five dollars and in which transaction the purchaser is not known, shall not be deemed to constitute an anonymous contribution under the provisions of this Subsection.

C. (1) No person shall make a cash contribution to a candidate or a committee and no candidate or committee shall receive cash contributions in excess of one hundred dollars during any calendar year. Any contribution in excess of such one hundred dollar aggregate amount, other than an in-kind contribution, shall be made by an instrument containing the name of the donor and the name of the payee.

(2) Upon receipt of a cash contribution of one hundred dollars or less, the candidate or committee receiving the contribution shall provide to the contributor a receipt for the exact amount of the contribution; such receipt shall contain the name, address, and social security number of the contributor, shall be signed by the contributor, and the candidate or committee receiving the contribution shall retain a copy of the receipt. If the contributor refuses to furnish his name, address, or social security number or refuses to sign the receipt, the contribution shall be immediately returned to said contributor. If the contributor is unable to write, he shall affix his mark to the receipt, and the person receiving the contribution shall affix the name of the incapacitated person to the receipt, provided he does so in the presence of a witness who shall also sign his name as witness to the mark. The copy of the receipt retained by the candidate or committee provided for in this Subsection shall be available to the supervisory

committee for inspection. The supervisory committee shall promulgate rules and regulations relative to the receipt required by this Subsection.

D. (1) No person shall knowingly coerce or attempt to coerce another person to give or withhold a contribution.

(2) No person based on an individual's contribution, promise to make a contribution, or failure to make a contribution shall directly or indirectly affect an individual's employment by means of:

(a) Denial or deprivation or the threat of the denial or deprivation of any employment or position.

(b) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such employment or position.

(c) Discharge, promotion, degradation, or change in any manner in rank or classification, or the threat or promise to do so.

(3)(a) No person based on an individual's contribution, promise to make a contribution, or failure to make any contribution shall directly or indirectly affect an individual by means of:

(i) Denial or deprivation or the threat of the denial or deprivation of membership or participation in any organization.

(ii) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such membership or participation in any organization.

(iii) Discharge, promotion, degradation, or change in any manner in rank, status, or classification in any organization, or the threat or promise to do so.

(b)(i) No organization shall directly or indirectly have as a condition of membership or participation the requirement that a person make a contribution to such organization which will be used by such organization for the purpose of supporting, opposing, or otherwise influencing the nomination or election of any person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer.

(ii) For the purposes of this Subparagraph, "organization" shall have the same meaning as provided for in R.S. 18:1483(6) and shall also include any dues or membership fees of any organization.

(c) For the purposes of this Paragraph, "organization" shall mean a partnership, association, labor union, political committee, corporation, or other legal entity, including its subsidiaries.

(4) No political committee, candidate, or other person shall knowingly and willfully make a contribution or expenditure using funds which were obtained through practices prohibited in this Subsection.

(5) Any contribution received by a candidate, political committee, or other person required to file reports under this Chapter which was obtained through practices prohibited in this Subsection shall be reported as provided in R.S. 18:1491.7(B)(21) and 1495.5(B)(20) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

E. No expenditure in excess of one hundred dollars shall be made from a petty cash fund and no expenditure shall be made from a petty cash fund for any personal services, except for gratuities paid for the serving of food or drink. No expenditure shall be made from the petty cash fund in violation of R.S. 18:1531.

F. No profit or nonprofit corporation, labor organization, or trade, business, or professional association shall make any campaign contribution or expenditure unless specifically authorized to do so whether: by the vote of the board of directors of the corporation, of the executive board of the labor organization or of the trade, business, or professional association at a regular or special meeting thereof; by the president, vice president, secretary, or treasurer of a corporation or labor organization whom the board has specifically empowered to authorize such contributions or expenditures, or, for a corporation, by any other person designated by resolution of the board of directors of a corporation to authorize contributions or expenditures; or by a vote of the membership of the labor organization. No profit or nonprofit corporation, labor organization or trade, business, or professional association shall make any contribution or expenditure, other than an in-kind contribution or expenditure, except by check.

G. No committee shall receive contributions or loans or make expenditures or loans, or make or receive a transfer of funds to or from another committee in the aggregate in excess of five hundred dollars during a calendar year until it has filed the annual statement of organization required by R.S. 18:1491.1. The chairman and the treasurer of any committee which violates the provisions of this Subsection shall be subject to the penalties provided in this Part. No candidate shall make a

contribution to any committee required to file an annual statement of organization by the provisions of R.S. 18:1491.1 which has not filed such a statement.

H. (1)(a) The following contribution limits are established for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made to a candidate or the principal or any subsidiary committee of a candidate by a recognized political party or any committee thereof.

(c) Notwithstanding the provisions of Subparagraph (a), the contribution limit for contributions made to an unsuccessful major office candidate, or the principal campaign committee and any subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(2)(a) Notwithstanding the provisions of Paragraph (1), the following contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the following campaign contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices, the membership of which political committee exceeds two hundred and fifty members as of the December thirty-first of the preceding calendar year, and additionally provided that at least two hundred and fifty of the members have each contributed at least fifty dollars to the political committee during the preceding one-year period:

(i) Major office – ten thousand dollars.

(ii) District office – five thousand dollars.

(iii) Other office – two thousand dollars.

No contribution in excess of the limits contained in Subparagraph (2)(a) of this Subsection shall be made by any political committee until such membership certification is made on the statement of organization form required by this Chapter and timely submitted to the supervisory committee by the applicable due date. Any political committee certified under this Paragraph shall notify the supported candidate in writing at the time any contribution is made under this Paragraph.

(c) If the contribution is made to a committee which is supporting or opposing candidates for different offices, the highest applicable limit shall apply.

(d) The provisions of this Paragraph shall not apply to recognized political parties and their committees.

(e) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the contributions limit for contributions by political committees to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(f) Notwithstanding the provisions of Paragraph (1) and Subparagraphs (2)(a) and (b) of this Subsection, the contributions limit for contributions by political committees certified according to the provisions of Subparagraph (2)(b) to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be twenty thousand dollars.

(3)(a) For purposes of this Subsection, a primary election and a general election shall constitute two separate elections. For purposes of this Subsection, for candidates and committees that participate in a general election, the reporting period for the general election shall be deemed to begin the day following the primary election.

(b) No person shall make a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods for an election, as defined in this Paragraph,

including reporting periods for any supplemental reports required, in excess of the contribution limits established in Paragraphs (1) and (2) of this Subsection, except as otherwise specifically provided in this Subsection.

(c) No candidate including his principal campaign committee and any subsidiary committee thereof, shall accept from the same contributor a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods of an election, as defined in this Paragraph, including reporting periods for any supplemental reports, in excess of the contribution limits established in Paragraph (1) of this Subsection, except as otherwise specifically provided in this Subsection, and except that the provisions of Paragraph (2) shall apply for contributions accepted from a political committee. The provisions of this Subparagraph shall not apply to recognized political parties and their committees.

(d) After January 1, 1989, no person shall make a loan, transfer of funds, or contribution to a candidate including his principal campaign committee with funds loaned to him without disclosing to the candidate or his committee the source of the funds. A candidate or his committee receiving such a loan, transfer of funds, or contribution shall not only report the name of the contributor, but also the source of the funds contributed.

(4) The provisions of this Subsection shall not prohibit a transfer of funds between a candidate or his

principal campaign committee and any subsidiary committee thereof, provided that all parties shall comply with applicable reporting requirements.

(5) The provisions of this Subsection shall not apply to any contributions or loans a candidate makes to his own campaign.

(6)(a) For purposes of this Subsection, "loan" shall not include any loan of money by a state bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the Federal Credit Union Administration, any licensed lender under the Louisiana Consumer Law, or an insurance company, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan:

(i) Shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors, and such loan by each endorser and guarantor shall be subject to the contribution limits provided in this Subsection;

(ii) Shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(iii) Shall bear the usual and customary interest rate of the lending institution.

(7)(a) The total amount of combined contributions for both the primary and general elections, from political committees, which may be accepted by a candidate and his

principal and subsidiary campaign committees, shall not exceed the following aggregate amounts:

(i) Major office candidates – eighty thousand dollars.

(ii) District office candidates – sixty thousand dollars.

(iii) Other office candidates – twenty thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made by a recognized political party or any committee thereof.

I. (1) On or after January 1, 1991, contributions received by a candidate or a political committee may be expended for any lawful purpose, but such funds shall not be used, loaned, or pledged by any person for any personal use unrelated to a political campaign, the holding of a public office or party position, or, in the case of a political committee, other than a candidate's principal campaign committee or subsidiary committee, the administrative costs or operating expenses of the political committee; except that excess campaign funds may be returned to contributors on a pro rata basis, given as a charitable contribution as provided in 26 USC 170(c), given to a charitable organization as defined in 26 USC 501(c)(3), expended in support of or in opposition to a proposition, political party, or candidacy of any person, or maintained in a segregated fund for use in future political campaigns or activity related to preparing for future candidacy to elective office. However, the use of campaign funds of a candidate or his principal or subsidiary committees to reimburse a candidate for expenses related to his political campaign or his holding of a public office or party position

shall not be considered personal use by the candidate. If a candidate is required by state or federal law to pay taxes on the interest earned by campaign funds of the candidate or any political committee of the candidate, the candidate may use the interest on which such tax is paid for such purpose. A payment from campaign funds shall not be considered as having been spent for personal use when the funds are used to replace articles lost, stolen, or damaged in connection with the campaign.

(2) The provisions of this Subsection shall not apply to campaign funds received prior to July 15, 1988.

(3)(a) A candidate or his principal or subsidiary campaign committee shall not make an expenditure of funds derived from contributions for any purpose so long as the candidate owes a fine, fee, or penalty imposed by a final order of a court or the supervisory committee pursuant to the provisions of this Chapter and against which all appeal delays have lapsed. This Paragraph shall apply to all contributions regardless of the date received by the candidate or committee.

(b) Any person who makes an expenditure in violation of Subparagraph (a) of this Paragraph may be assessed a civil penalty not to exceed two hundred percent of the expenditure or one thousand dollars, whichever is greater.

J. (1) Any candidate, treasurer, or chairman of a political committee who violates any provision of Subsection H or I of this Section shall be assessed a penalty of not more than five thousand dollars or the amount of the violation, whichever is greater, except that the penalty for a knowing and willful violation shall not be more than ten thousand dollars or two hundred percent of the violation,

whichever is greater. "Knowing and willful", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence. The civil penalties provided for in R.S. 18:1505.5 shall be inapplicable to violations of Subsection H or I. Enforcement of Subsections H and I shall be in the same manner provided for in Part VI of this Chapter.

(2) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as soon as the committee determines, as a result of its review and investigation of any sworn complaint or other document or information received by the supervisory committee, that a violation of Subsection H or I of this Section has occurred. If the supervisory committee makes a determination of such violation at least ten days prior to the election in which the candidate, treasurer, or chairman of a political committee in apparent violation is participating, the supervisory committee shall institute such civil proceedings at least by the fourth calendar day prior to the election.

K. (1) During any four year calendar period commencing January 1, 1991 and every fourth year thereafter, no person shall contribute more than one hundred thousand dollars to any political committee or any subsidiary committee of such political committee, other than the principal or any subsidiary committee of a candidate. Such limitation on a contribution shall not apply to any contribution from a national political committee to an affiliated regional or state political committee.

(2) The provisions of this Subsection shall not apply to contributions made by a recognized political party or any committee thereof.

L. (1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

(a)(i) Any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law.[1]

(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming

[1] R.S. 27:301 et seq.

equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act,[2] and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act,[3] and any person who owns a casino where such gaming operations are licensed.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this

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[2] R.S. 27:41 et seq.

[3] R.S. 27:201 et seq.

Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

(d) Any person subject to the provisions of R.S. 27:63(C)(4), 226(C)(4), or 261(D).

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

(4) This Subsection shall not prohibit an expenditure by a candidate for his own campaign or a contribution, loan, or transfer of funds by a candidate to his own political committee.

(5)(a)(i) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts as provided in Paragraph J(1) of this Section. The penalties provided in R.S. 18:1505.5 shall not be applicable to any violation of this Subsection.

(ii) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or other person required to file reports within ten business days after the recipient candidate, committee, or

person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

(b) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as provided in Paragraph J(2) of this Section.

(c) The criminal penalties provided in R.S. 18:1505.6(C) shall be applicable to any violation of this Subsection.

(d)(i) In addition to all other applicable penalties, the violation of this Subsection by any person to whom the Subsection is applicable pursuant to Paragraph (3) of this Subsection shall be reported by the supervisory committee to the gaming division of the office of state police, the Riverboat Gaming Commission and the board of directors of the Louisiana Economic Development and Gaming Corporation.

(ii) Such a violation of this Subsection shall be prohibited conduct under the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and gaming Corporation Act, and the Video Draw Poker Devices Control Law that renders the violator unsuitable to hold the license which made him subject to the provisions of this Subsection.

(6)(a) The gaming enforcement section of the office of state police of the Department of Public Safety and Corrections, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a

permit, license, or contract as provided in Paragraph (3)(a)(i) and (ii) of this Subsection.

(b) The Louisiana Economic Development and Gaming Corporation, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a permit, license, or contract as provided in Paragraph (3)(a)(iii) of this Subsection.

M. (1) No foreign national shall, directly or through any other person, make any contribution of money or other thing of value, or promise expressly or impliedly, any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; nor shall any person solicit, accept, or receive any such contribution from such foreign national.

(2) As used in this Subsection, "foreign national" means:

(a) A foreign principal such as a government of a foreign country or a foreign political party, except that "foreign national" shall not mean any individual.

(b) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country, unless authorized and qualified to do business in Louisiana.

(c) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence and accorded the privilege of residing permanently in the United States as an immigrant.

(3)(a) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be subject to the penalties provided in R.S. 18:1505.5 and R.S. 18:1505.6.

(b) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or other person required to file reports within ten business days after the recipient candidate, committee, or person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

N. Any interest payments made to a candidate from campaign funds of such candidate or any political committee of such candidate on loans made by the candidate to his campaign or to his political committee shall not be considered as having been spent for personal use to the extent that the interest charged on such loans does not exceed the judicial interest rate at the time the loan was made.

O. (1) The supervisory committee may prohibit a candidate or elected official from using contributions received by, or other campaign funds of, such candidate or elected official or the principal or a subsidiary campaign committee of such candidate or elected official to pay a

fine, fee, or penalty, assessed for a violation of this Chapter upon a finding that the violation was intentional or egregious.

(2) "Intentional" for the purposes of this Subsection shall mean actions which, in the considered opinion of the supervisory committee, were designed to avoid full and accurate compliance with the provisions of this Chapter. "Egregious" for the purposes of this Subsection shall mean actions which, in the considered opinion of the supervisory committee, significantly injured the public's right to full and accurate disclosure of the financing of election campaigns.

La. Admin. Code tit. 42, pt. IX, § 2941. Political Contributions

A. Political Contributions by the Casino Operator, Casino Manager, their employees and their affiliated entities are prohibited in accordance with the Act and the Campaign Finance Disclosure Act (*La. R.S. 18:1481* et seq.) and in particular *La. R.S. 18:1505.2(L)*.

CASINO ASSOCIATION OF LOUISIANA and ITS INDIVIDUAL MEMBERS	*	**SUIT NUMBER: ___ DIV: ___**
VERSUS	*	**19TH JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	*	**EAST BATON ROUGE PARISH**
	*	**STATE OF LOUISIANA**

VERIFIED PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, come the petitioners, CASINO ASSOCIATION OF LOUISIANA which is a Louisiana corporation, entitled to and domiciled in the State of Louisiana, and THE INDIVIDUAL MEMBERS OF THE CASINO ASSOCIATION OF LOUISIANA, all of whom are licensed by the State of Louisiana as riverboat casino owners or operators, respectfully petition and request this Honorable Court as follows:

1.

Made defendant herein is the State of Louisiana, through the Honorable Murphy J. Foster, Jr., Governor, and the Honorable Richard P. Ieyoub, Attorney General

2.

Petitioner, Casino Association of Louisiana, is a corporation of the State of Louisiana which represents its

member riverboat casinos. Casino Association of Louisiana's corporate existence began on November 1, 1993 when it was known as the Riverboat Casino Association of Louisiana. On or about September 25, 1998 Articles of Reincorporation we [sic] filed in which the Association's name became Casino Association of Louisiana. Casino Association of Louisiana's executive offices are located at 265 Third Street, Baton Rouge, Louisiana 70801. Its membership consists of owners and operators of riverboat casinos within the State of Louisiana. The majority of the riverboat casinos within the State are presently or have in the past been members of Casino Association of Louisiana.

3.

The aforementioned petitioners desire to make or have the opportunity to make campaign contributions to candidates who are running for election or reelection and to the political committees of such candidates or to political committees who otherwise support such candidates.

4.

Petitioners, however, are prohibited from making any such contributions by the applicable provisions of LSA-R.S. 18:1505.2(L). For the reasons discussed hereinbelow and based upon the jurisprudential principles applicable thereto, it is respectfully represented that the LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional in that they are violative of the First and Fourteenth Amendments to the United States Constitution, the Equal Protection guarantees accorded by Article I, Section 3 of the Louisiana Constitution 1974, and

Article I, Sections 7 and 9 of the Louisiana Constitution 1974. Based upon this, it is respectfully requested that this Honorable Court declare LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(iii) unconstitutional.

5.

During the First Extraordinary Session of the Legislature of 1996, the Louisiana Legislature enacted Act 67 (also known as Senate bill 194), which statutory enactment prohibited candidate and candidate political committee campaign contributions of some gaming licensees of the State of Louisiana in state and local elections.

6.

The aforementioned legislative enactment was designated as LSA-R.S. 18:1505.2(L) which provides in pertinent part as follows:

> L(1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry.
>
> (2) No person to whom the Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this

Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment, including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

* * *

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in the Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent of [sic] more of each legal entity is owned by the legal entity ownership beneath it.

* * *

(b)(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

* * *

(c) Any officer, director, trustee, partner, or senior management level employee or key employees as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) or this Paragraph.

* * *

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

* * *

(5)(a)(i) Any person who makes a contribution, loan or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts in Paragraph J(1) of this Section. The penalties provided in R.S. 18:1505.5 shall not be applicable to any violation of this Subsection.

* * *

(c) The criminal penalties provided in R.S. 18:1506.6(C) shall be applicable to any violation of this Subsection.

* * *

(d)(i) In addition to all other applicable penalties, the violation of this Subsection by an [sic] person to whom the Subsection is applicable pursuant to Paragraph (3) of this Subsection shall be reported by the supervisory committee to the gaming division of the office of state police, the Riverboat Gaming Commission and the board of directors of the Louisiana Economic Development and Gaming Corporation.

* * *

(ii) Such a violation of this Subsection shall be prohibited conduct under the Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, that renders the violation unsuitable to hold the license which made him subject to the provisions of this Subsection.

* * *

(See Exhibit "A", copy of the applicable statute).

7.

Under the provision of the aforementioned legislative enactment, all persons licensed by the Louisiana Gaming Control Board to conduct riverboat gaming, any person who holds a license to conduct gaming activities on a riverboat, pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, any person who owns a riverboat upon which gaming activities are licensed to be conducted, any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a)(ii) aforementioned, any holding, intermediary, or subsidiary company of any person included in Subparagraph (a)(ii) aforementioned, and any officer, director, trustee, or partner thereof, any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a)(ii) or (b)(i)(ii), or this Paragraph, or the spouse of any person to whom this Subsection is made applicable by this Paragraph, who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts in Paragraph J(1) of this Section. The aforementioned persons are prohibited from making campaign

contributions to any candidate or political committee of any such candidate.

8.

It is firmly established in the jurisprudence that merely because a person participates in an industry that may be regulated pursuant to a state's police power, the state is not empowered via a state's police powers to invade fundamentally protected rights under the guise of regulation of this activity.

9.

The statutory scheme which establishes the legitimate nature of riverboat gaming and riverboat casino businesses in the State of Louisiana indicates that the licensing of individuals and corporate entities for riverboat gaming and riverboat casino operations is a privilege. The U.S. Supreme Court jurisprudence is clear that this statutes [sic] do not lessen the First Amendment protections that are accorded to any such persons so licensed to participate in riverboat gaming activities. The conferral of such a benefit to any person may not be conditioned upon the surrender of a constitutional right or any part thereof.

10.

The federal and Louisiana jurisprudence has long recognized that the prohibition of an individual from making a contribution or expenditure to a candidate or political committee of that candidate is recognized as implicating fundamental and protected rights of the First Amendment which safeguard an individual's right to

freedom of association and the right to freedom of expression.

11.

The U.S. Supreme Court has long held that the freedoms associated with First Amendment guarantees are safeguarded from abridgement and unwarranted invasion via state action by the Due Process Clause of the Fourteenth Amendment.

12.

These First and Fourteenth Amendment associational freedoms have been held to guarantee the freedom [sic] a person to associate with others for the common advancement of political beliefs and ideas which associational freedom encompasses the right to associate with the political part [sic] of one's choice.

13.

It has further been held that contribution and expenditure limitations operate in an area of the **most fundamental** First Amendment activities.

14.

Based thereupon, it is an established jurisprudential principle that government action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

15.

The U.S. Supreme Court has previously held that these principles regarding First Amendment associational protections are equally applicable to corporations and that the mere fact that an organization is a corporation does not remove its speech from the ambit of the First Amendment.

16.

In accordance with the principles discussed in the foregoing regarding **limitations** of contributions to candidates and political committees of candidates, the U.S. Supreme Court, has identified only a single narrow exception to the rule that **limits** on political activities are contrary to the First Amendment. This exception serves [sic] protect the public confidence in the political process and to reduce the perception of undue influence of large contributors to a candidate or the political committee of that candidate. It has long been established in the jurisprudence that the prevention of corruption or the appearance of corruption are the only legitimate and compelling government interest [sic] thus far that would suffice to limit and restrict First Amendment freedoms.

17.

Prior to the enactment of Act 67, the State had already taken precautions to limit the corruptive effects of large individual campaign contributions in a constitutional manner by enacting LSA-R.S. 18:1505.2(H)(1)(a). This constitutional statutory mechanism serves to protect the State and the public's interest regarding corruption or the appearance of corruption of the political process through

undue influence of large contributors to a candidate or the political committee of that candidate.

18.

The Louisiana Election Code at LSA-R.S. 1505.2(H)(1)(a) limits candidate and candidate political committee campaign contributions by any and all persons to certain amounts for certain elections. Based thereupon, all citizens of this state are prohibited from contributing more than the statutorily delineated amounts in any state election.

19.

The Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a) provides specifically and more fully as follows:

> The following contribution limits are established for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:
>
> (i) Major office – five thousand dollars.
>
> (ii) District office – two thousand five hundred dollars.
>
> (iii) Other office – one thousand dollars.

20.

The jurisprudential principle regarding the propriety of **limitations** on campaign contributions recognizes that there is a substantial governmental interest in **limiting** contributions to candidates or their political committees because of the actual corruption that may result from a

candidate's dependence on large individual contributors and to the extent that these large contributions are given to secure a political *quid pro quo* it was recognized that the integrity of our system of representative democracy would be undermined.

21.

Because the state of Louisiana has enacted a general provision of the Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a) which limits contributions that any and all persons may make to a candidate or political committee of any candidate, any state interest in preventing actual or apparent corruption of candidates through their dependence on large individual contributors simply does not exist and cannot be used as a justification for First Amendment restrictions on persons associated with the gaming industry in the form of a campaign contribution prohibition imposed by LSA-R.S. 18:1505.2(L)(3)(a)(ii)(iii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(iii).

22.

Under the statutory limitations enacted in the Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a), it is legally impossible to effect a *quid pro quo* by any person associated with the gaming industry to any greater degree than a person associated or licensed in some other regulated business because all are limited to making the same contribution amount.

23.

In light thereof, the State cannot justify a further restriction which would impose an absolute **prohibition** of candidate and political committee campaign contributions by a singular element of riverboat casino licensees and persons owning a percentage of those riverboats.

24.

Moreover, it is even further inconceivable how such a basis as the prevention of corruption would or could be used to support the enactment of LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied when the State requires all riverboat casino applicants, and the owners as well as all officers, directors, trustees, partners, senior management level employees, or key employees as defined in 27:205(19) of any person included in § a or b of LSA-R.S. 18:1505.2(L) thereof to meet onerous suitability criteria and to undergo a detailed and lengthy licensing process prior to licensing for gaming activities.

25.

Each applicant for a license to conduct riverboat gaming is investigated by the Louisiana State Police, the investigatory arm of the Louisiana Gaming Control Board, for anywhere from four months to six, or more months before a license is issued if all suitability criteria are determined to have been met. The suitability documentation is likewise required for all officers, directors and managerial employees of any such business licensed to operate riverboat casinos.

26.

The statutory scheme which governs the regulation of riverboat casinos in Louisiana provides at LSA-R.S. 27:311(E) as follows:

> No license shall be issued by the division except upon receipt of a sworn application and a finding by the division that the applicant, the application, and all persons described in R.S. 27:310 meet the requirements of that Section.

27.

The aforementioned statutory provision refers to the criteria for licensing for riverboat gaming and riverboat casino activities that are contained in LSA-R.S. 27:310 which in pertinent part are as follows:

* * *

> B. (1) No person shall be granted a license under the provisions of this Chapter unless the applicant has demonstrated to the division that he is suitable for licensing. For purposes of this Chapter, suitability means the applicant of licensee is:
>
> (a) **A person of good character, honesty, and integrity.**
>
> (b) **A person whose prior activities, arrest or criminal record if any, reputation, habits, and associations do not pose a threat to the public interest of this state** or to the effective regulation of riverboat gaming and riverboat casinos, and do not create or enhance the dangers of unsuitable, unfair, or illegal practices,

methods, and operations in the activities authorized by this Chapter and financial arrangements incidental thereto.

(C) Likely to conduct business as authorized by this Chapter in complete compliance with the provisions of this Chapter (emphasis supplied).

* * *

28.

It is untenable for the State to certify that licensed, qualified riverboat casino owners, operators and key employees are persons of good character, honesty, and integrity whose reputation, habits, and associations do not pose a threat to the public interest of this state, yet to enact a statute aimed at prohibiting their ability to contribute campaign contributions to candidates or political committees of candidates in order to prevent corruption or the appearance of corruption of the political process.

29.

Because such a position is untenable, it is by definition unconstitutional and clearly violative of one's First Amendment associational right to participate in the electoral process via candidate and committee contributions in the political process.

30.

Furthermore, there is no U.S. Supreme Court, other federal jurisprudence, or jurisprudence of this state which supports the contention that a singular segment of the

business community or the public in general may be **prohibited** from making campaign contributions.

31.

There is no U.S. Supreme Court, other federal jurisprudence, or jurisprudence of this state which identified a state interest that is sufficient to support the prohibition of candidate or political committee contributions by a singular segment of the business community or the public in general.

32.

The applicable federal jurisprudence has held that total bans on campaign contributions are generally unconstitutional.

33.

The U.S. Supreme Court has held that when the government defends a regulation of speech as a means to redress past harms or prevent anticipated harms, it must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way. The State in this matter cannot do so.

34.

In light of the Louisiana statute LSA-R.S. 18:1505.2(H)(1)(a) which limits candidate and political campaign contributions for **all persons**, along with the strict background investigation of all applicants prior to licensing, and the

certification by the State that these persons are suitable and reputable persons, there is no rational or reasonable basis, much less a compelling state interest, nor any factual scintilla of evidence nor any case law to support a campaign finance prohibition on certain persons licensed in the riverboat casino industry in Louisiana.

35.

Moreover, there is no jurisprudential principle upon which the state can rely to justify the prohibition of any element of the riverboat casino industry from making campaign contributions to candidates and the political committees of candidates and therefore, LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are clearly repugnant to established First Amendment freedoms and have no place in our democratic system of government.

36.

In light of the established principles of jurisprudence discussed in the foregoing, it is clear that the prohibition imposed by the challenged statute and regulation impinge on these firmly established fundamental rights.

37.

Accordingly, as the First Amendment rights of the petitioners herein to freedom of association and expression have been impinged as a result of the legislative pronouncements contained in LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c), insofar as they are

applied [sic] LSA-R.S. 18:1505.2(L)(3)(a)(ii), unconstitutionally prohibiting candidate and political committee campaign contributions by the petitioners, and based thereupon, these statutory provisions should, accordingly, be declared unconstitutional for the reasons discussed in the foregoing.

38.

Furthermore, and in the alternative, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are violative of the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the Louisiana Constitution.

39.

The petitioners in the present matter are accorded protections of certain fundamental rights under the Fourteenth Amendment to the United States Constitution which may not be impinged or the object of deprivation barring a showing by the State of Louisiana that the deprivation or impingement of that fundamental right serves some compelling state interest or objective.

40.

LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2 (L)(3)(b)(c), insofar as they are applied to LSA-R.S. 18:1505.2 (L)(3)(a)(ii), discriminate against only certain persons who are licensed to conduct gaming activities on a riverboat, any person who owns a riverboat upon which gaming activities are licensed to be conducted, any person with a

10% or greater interest in a riverboat casino, any holding, intermediary, or subsidiary company of a riverboat casino owner or operator, including any officer, director, trustee or partner of such a company, and any officer, director, trustee, partner, senior management or key employee of a riverboat casino.

41.

There are 14 licensed establishments that are riverboat gaming casinos and the maximum number of licenses for riverboat gaming casinos allowed under law within the state of Louisiana is 15.

42.

There is a large number of persons who are licensed as officers, directors, trustees, partners, senior management level employees, key employees.

43.

It is inconceivable how the state can rationally justify a restriction on campaign contributions that limits the associational freedoms of a large number of riverboat gaming casino licensees on the basis of the prevention of corruption or the appearance of corruption but except some other gaming licensees from these campaign restrictions.

44.

Other gaming industries such as the lottery, indian gaming and charitable gaming are not subjected to this

prohibition on contributions to candidates and political committees of candidates. In fact no other regulated businesses whose conducting of business activities likewise is dependant upon the conferral of a license by the State of Louisiana is [sic] prohibited from making campaign contributions. In fact, some businesses, such as utility companies can even contribute to the campaigns of Public Service Commission members who regulate the rates that utility companies can charge the general public.

45.

It seems untenable to assert that a state interest or objective is achieved which is sufficient to justify this particular scheme of discrimination that mutes the political voices of the members of this highly regulated riverboat casino industry, but allows the vast majority of others who are similarly licensed in gaming, such as video poker and in other regulated businesses, to remain free to participate in the political process, unhindered and unencumbered by any legislative or regulatory prohibition. The reasoning of the State in enacting LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(ii)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), if any, is not compelling nor constitutionally sufficient.

46.

Because the state had previously enacted campaign contribution limitations applicable to all persons contained in LSA-R.S. 18:1505.2(H)(1)(a), the State cannot establish any interest, much less a compelling state interest, that is required to overcome the presumption that the challenged provisions, LSA-R.S. 18:105.2(L)(3)(a)(ii) and LSA-R.S.

18:1505.2(L)(3)(b)(ii)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are violative of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

47.

The aforementioned analysis and result should be dispositive and determinative of the unconstitutional nature of the statute and regulation under Article 1, Section 3 of the Louisiana Constitution of 1974 as state constitutions cannot be interpreted to afford less protection than the federal Constitution as such an interpretation would violate the federal Supremacy Clause.

48.

In fact, from providing merely the same standard of equal protection as accorded by the U.S. Constitution, the Louisiana Constitution of 1974 has been interpreted by the jurisprudence of this state to provide greater equal protection rights than are accorded under the Fourteenth Amendment to the U.S. Constitution.

49.

Thus, if the equal protection clause of the Louisiana Constitution provides even greater protection than that of the U.S. Constitution, and LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional under the applicable equal protection analysis under the Fourteenth Amendment, then it is only logical to conclude that the challenged statutory and regulatory

provisions are unconstitutional under Article 1, Section 3 of the Louisiana Constitution of 1974.

50.

Accordingly, as the First Amendment rights of the petitioners herein to freedom of association and expression have been impinged as a result of the legislative pronouncements contained in LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), which provisions unconstitutionally prohibit candidate and political committee campaign contributions by petitioners, these statutory provisions should, accordingly, be declared unconstitutional for the reasons discussed in the foregoing.

51.

Moreover, and in addition to the aforementioned, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutionally overbroad, which over breadth constitutes a violation of the First and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7 and 9 of the Louisiana Constitution.

52.

A challenge as to the overbreadth of a statute or regulation is appropriate when the particular statutory or regulatory provision is so broad that it acts as an impediment to the exercise of protected and privileged First Amendment rights.

53.

An overbreadth challenge is a facial challenge to the validity of a statute or regulation, and as such a reviewing court does not review the challenged provision "as applied" to the petitioner, but rather tests the constitutionality of the provisions in terms of their potential applications.

54.

With regard to the challenged statutes, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii) and (c), of Act 67 of the First Extraordinary Session of the Legislature of 1996, petitioners herein respectfully aver that, the scope of the conduct that is impermissibly prohibited far exceeds the limit of constitutionally protected conduct that may properly be proscribed by the state regarding campaign contribution limitations.

55.

The above referenced statutes prohibit all campaign contributions to any candidates and any political committees of candidates by qualified individuals who hold a license to conduct gaming activities on a riverboat, any person who owns a riverboat upon which gaming is licensed to be conducted, any person who has at least a 10% interest of any riverboat casino or license to conduct gaming activities; any holding, intermediary or subsidiary company of a riverboat owner or operator, any officer, director, trustee or partner of such a company and any officer, director, trustee, partner, senior management level employee or key employee of a riverboat which is licensed for gaming.

56.

As discussed in the foregoing, it is established in the applicable jurisprudence that this campaign contribution prohibition far exceeds the scope of constitutional acceptability.

57.

Therefore, in light of the foregoing, it is clear that LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), of Act 67 of the First Extraordinary Session of the Legislature of 1996, act as an impediment to the exercise of the protected and privileged First Amendment rights of petitioners herein.

58.

Accordingly, and based upon the principles of jurisprudence discussed in the foregoing, these challenged statutory provisions should be declared unconstitutionally overbroad.

59.

In addition, petitioners, the Individual Members of Casino Association of Louisiana are licensees of the Board as defined in § 107 of Title 42 Part XIII of the Louisiana Administrative Code and as such, are precluded from making a loan, contribution, or expenditure to or on behalf of any political committee or a candidate's political committee (see copy of text of § 107 of Title 42 Part XIII of the Louisiana Administrative Code, made a part hereof for all purposes and attached hereto as Exhibit "B").

60.

For the reasons discussed hereinabove and based upon the jurisprudential principles applicable thereto, it is respectfully represented that § 107, insofar as § 107 precludes candidate and political committee contributions and expenditures by casino operators or licensees, is unconstitutional in that it is violative of the First and Fourteenth Amendments to the United States Constitution and Equal Protection guarantees accorded by the [sic] Article 1, Section 3 of the Louisiana Constitution [sic] 1974 and is unconstitutionally overbroad.

61.

This identical issue has been addressed by the Louisiana Supreme Court with regard to the prohibition placed upon video poker device owners and others who are licensed within the video poker industry.

62.

In the case of *Penn, et al v. State of Louisiana, et ux*, 99-2337 (La. 10/29/99) 751 So. 2d 823, the Louisiana Supreme Court held that LSA-R.S. 18:1505.2(L)(3)(a)(i) and LSA-R.S. 18:1505.2(L)(b)(i) insofar as it applied to LSA-R.S. 18:1505.2(L)(3)(a)(i) were declared unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and § 107 of Title 42 Part XIII of the Louisiana Administrative Code, insofar as it precluded candidate and political committee contributions by video draw poker licensees was declared invalid.

63.

The language and prohibitions which were declared unconstitutional in the case of video poker licensees is virtually identical to the language and prohibitions challenged in the present petition. The *Penn, et al v. State of Louisiana, et ux* case is attached hereto as Exhibit C, and should be applicable to this case.

WHEREFORE, petitioners pray:

I. That citation issue and service be made upon the State of Louisiana, through the Honorable Murphy J. Foster, Governor, and the Honorable Richard P. Ieyoub, Attorney General.

II. The LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), and § 107 of Title 42 Part XIII of the Louisiana Administrative Code, insofar as § 107 precludes candidate and political committee contributions and expenditures by riverboat casino operators or licensees, be declared unconstitutional for the reasons stated hereinabove; and,

III. For all other equitable relief to which petitioner may be entitled.

Respectfully submitted,

LUNN, IRION, SALLEY, CARLISLE & GARDNER
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ATTORNEYS FOR PETITIONERS,
CASINO ASSOCIATION OF LOUISIANA and ITS INDIVIDUAL MEMBERS

PLEASE SERVE:

State of Louisiana
through Honorable Murphy J. Foster, Governor
State Capital, 4th Floor
Baton Rouge, LA 70804

State of Louisiana
Department of Justice
through Attorney General Richard Ieyoub
State Capitol, 22nd Floor
Baton Rouge, LA 70804

VERIFICATION

STATE OF LOUISIANA

PARISH OF CADDO

BEFORE ME, the undersigned Notary Public, personally came and appeared:

CHARLES C. BARHAM

who, being first duly sworn, did depose and say that he is a person of the full age of majority and a domiciliary of the State of Louisiana and further that he is the Executive Director of the Casino Association of Louisiana; that he

has read the foregoing Verified Petition for Declaratory Judgment and examined all of the exhibits attached thereto; and that all of the allegations of fact contained therein are true and correct to the best of his knowledge, information and belief.

/s/ Charles C. Barham
Charles C. Barham

SWORN TO AND SUBSCRIBED before me in Baton Rouge, East Baton Rouge Parish, State of Louisiana on this the 18th day of September, 2000.

/s/ Tom Withers III
NOTARY PUBLIC

La. Admin. Code. tit. 42, pt. IX, § 2941

§ 2941. Political Contributions

A. Political Contributions by the Casino Operator, Casino Manager, their employees and their affiliated entities are prohibited in accordance with the Acts and the Campaign Finance Disclosure Act (*La. R.S. 18:1481* et seq.) and in particular *La. R.S. 18:1505.2*(L).

MOTION FILED
OCT 2 3 2002

(2)

No. 02-466

IN THE

Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,
Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE DKT LIBERTY PROJECT IN SUPPORT OF PETITIONER

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Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

MOTION OF THE DKT LIBERTY PROJECT FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER[1]

The DKT Liberty Project, through its undersigned counsel, respectfully moves this Court, pursuant to Rule 37.2(b) of the Rules of the Supreme Court, for leave to file the accompanying brief *amicus curiae* in support of

[1] Pursuant to Supreme Court Rule 37.6, none of the parties authored the brief *amicus curiae* in whole or in part and no one other than *amicus* or its counsel contributed money or services to the preparation or submission of the brief.

Petitioner, Casino Association of Louisiana, Inc. Petitioner has consented to the submission of this brief, and its letter of consent has been filed with the Clerk of this Court. Counsel for Respondent, State of Louisiana, has withheld consent to the filing of the brief.

The DKT Liberty Project was founded in 1997 to defend individual liberties against encroachment by all levels of government. This not-for-profit organization advocates vigilance over regulation of all kinds, especially restrictions of individual civil liberties that threaten the reservation of power to the citizenry that underlies our constitutional system. The DKT Liberty Project is particularly involved in defending the right to freedom of speech, one of the most profound individual liberties.

The Louisiana statute at issue here bans all campaign contributions by certain persons connected with the gambling industry. Although the ostensible goal is to avoid the political corruption of undue influence, the Statute targets only one industry – the gambling industry. And it targets that industry despite the lack of any evidence that the gambling industry has exercised or will exercise any undue influence on the Louisiana legislature. Prophylactic bans on the speech of one disfavored industry cannot withstand strict scrutiny. And if gambling voices are allowed to be silenced here, other voices will surely be silenced as well in other places. The current explosion in experiments with campaign finance reform at both the state and federal level must be carefully evaluated to ensure that the fundamental right in a democracy to choose to support and affiliate oneself with a candidate is not destroyed. Because of The DKT Liberty Project's strong interest in free speech and in the participation of many voices in government, it is well-

situated to provide this Court with additional insight into the issues presented in this case.

For the foregoing reasons, The DKT Liberty Project respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of Petitioner.

Respectfully Submitted,

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On Petition For A Writ of Certiorari To The Louisiana Supreme Court

BRIEF *AMICUS CURIAE* OF THE DKT LIBERTY PROJECT IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* is set forth in the foregoing Motion of The DKT Liberty Project for Leave to File Brief *Amicus Curiae* in Support of Petitioner.

SUMMARY OF ARGUMENT

If it protects anything, the First Amendment protects the right of citizens to express support of and to affiliate themselves with candidates for public office. Indeed, this right of political speech is at the core of the First

Amendment. But the Louisiana Statute bans persons substantially interested in the gaming industry from exercising that right.

Louisiana's selective ban on contributions is a content-based regulation, subject to a strict scrutiny standard of review. The regulation purports to prevent corruption and undue influence. But the Statute and its history demonstrate that the legislature had no evidence of undue influence (at least not from the gaming industry), but it was quite concerned about the message that campaign contributions by gaming interests would send to a candidate's constituents. Thus, there is no compelling interest and the Statute is not narrowly tailored.

Furthermore, Louisiana's ban is impermissibly viewpoint-based as it targets only the likeliest and most motivated pro-gambling advocates. Anti-gambling persons and organizations are not similarly banned from expressing their political views through campaign contributions.

Because many States are experimenting with campaign finance reform, and because this kind of industry- or person-specific *ban* may be the subject of further experimentation if left unchecked, this Court should grant certiorari.

ARGUMENT

I. THE LOUISIANA CAMPAIGN STATUTE IS A CONTENT-BASED REGULATION OF EXPRESSION THAT CONTRAVENES THE FIRST AMENDMENT.

The Louisiana Election Campaign Finance statute ("Campaign Statute" or "Statute") prohibits an identified group of persons who are "substantially interested in the

gaming industry" from making any "contribution, loan, or transfer of funds ... to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate." La. Rev. Stat. Ann. § 18:1505.2(L)(1), (2) and (3). In prohibiting campaign contributions, the Statute violates the First Amendment's guarantee of free expression. Furthermore, the Statute targets a particular category of expression because of the message contained therein. It should be analyzed, therefore, as a content-based regulation and subjected to a strict scrutiny standard of review. As the Statute is neither justified by a compelling state interest nor narrowly drawn to achieve such an interest, it should be invalidated as an impermissible abridgement of free expression.

A. The Ban On Campaign Contributions Implicates The First Amendment's Guarantee Of Free Expression.

As a threshold matter, "[c]ontributions to political campaigns are protected speech under the First Amendment." *VanNatta v. Keisling*, 151 F.3d 1215, 1219 (9th Cir. 1998) (Brunetti, J., concurring, adopted as unanimous opinion of the court) (citing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 657 (1990)). This Court has consistently upheld this principle. In *Buckley v. Valeo*, the Court stressed that a political contribution is clearly a "general expression of support for the candidate and his views." 424 U.S. 1, 20-21 (1976). In *Nixon v. Shrink Missouri Government PAC,* the Court applied that principle in the context of state campaign limitations and reiterated that the First Amendment's "constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." 528 U.S. 377, 386 (2000)

(internal quotation marks and citations omitted). Most recently, in *FEC v. Colorado Republican Fed. Campaign Comm.*, the Court again stressed that "contributing to political candidates ... fall[s] within the First Amendment's protection of speech." 533 U.S. 431, 440 (2001).

If the mere limitation of campaign contributions raises First Amendment issues, then plainly the Louisiana Statute's outright ban must also raise those issues. The Statute's prohibition on *any* campaign contribution by the targeted group of persons denies them the "expression of support evidenced by a contribution." *Buckley*, 424 U.S. at 21. The *Buckley* Court recognized that even the federal *limits* on contributions – which are far more generous than Louisiana's *absolute ban* – "impose direct quantity restrictions on political communication." *Id.* at 18. The Louisiana Campaign Statute, therefore, clearly implicates the First Amendment's guarantee of free expression.

B. The Statute Is A Content-Based Regulation Of Expression Because It Cannot Be Justified Without Reference To The Content Of The Regulated Expression.

Whether a government regulation is content-based or content-neutral "is critical, as it controls the level of scrutiny [to] apply in assessing whether the infringement results in a constitutional violation." *Day v. Holahan*, 34 F.3d 1356, 1360 (8th Cir. 1994). A regulation is content-neutral only when it can be "justified without reference to the content of the regulated speech." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). By contrast, a regulation that restricts expression "because of its message, its ideas, its subject matter, or its content" is decidedly content-based. *Police Dep't of Chicago v. Mosley*, 408 U.S.

92, 95 (1972). *See also Boos v. Barry*, 485 U.S. 312 (1988) (finding as content-based a statute prohibiting *embarrassing* signs around foreign embassies because its justification focuses only on the content of the speech and the impact it has on its listeners).

Moreover, "even a regulation neutral on its face may be content-based if its manifest purpose is to regulate speech because of the message it conveys." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 645 (1994). Thus, in *United States v. Eichman*, the Court considered a First Amendment challenge to the federal Flag Protection Act ("FPA"), 18 U.S.C. § 700, which provided that whoever "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both." 496 U.S. 310, 314 (1990). Congress had passed the FPA to replace an earlier version invalidated by *Texas v. Johnson*.[1] 496 U.S. at 314 n.3. The Government contended in *Eichman* that the FPA – unlike the Texas statute in *Johnson* and the earlier version of the federal statute – did

---

[1] In *Texas v. Johnson*, 491 U.S. 397 (1989), the Court found unconstitutional a Texas statute criminalizing desecration of the U.S. flag "'in a way that the actor knows will seriously offend'" onlookers. *Id.* at 400 n.1 (quoting Texas Penal Code Ann. § 42.09 (1989)). The Court first held that Johnson's flag-burning implicated the First Amendment as conduct "sufficiently imbued with elements of communication." *Id.* at 406 (internal quotation marks and citation omitted). The Court analyzed the statute as a content-based regulation of expression because the State's asserted interest "in preserving the flag as a symbol of nationhood and national unity" is implicated only "when a person's treatment of the flag communicates some message." *Id.* at 410. Accordingly, the Court subjected the statute to "the most exacting scrutiny" and found that the State's asserted interest could not justify the abridgement of the demonstrator's First Amendment rights. *Id.* at 412-20.

not target expressive conduct on the basis of the content of its message. *Id.* at 315.[2] The Court disagreed:

> Although the Flag Protection Act contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression, and concerned with the content of such expression.

Id. (internal citations and quotation marks omitted). The Court reasoned that as in *Johnson*, the Government's interest in preserving the flag as symbol of certain national ideals is "implicated 'only when a person's treatment of the flag communicates [a] message' to others that is inconsistent with those ideals." *Id.* at 316 (quoting *Johnson*, 491 U.S. at 410). The FPA was content-based because "its restriction on expression cannot be 'justified without reference to the content of the regulated speech.'" *Id.* at 318 (citing *Boos*, 485 U.S. at 320).

Similarly, the Louisiana Campaign Statute must be analyzed as a content-based regulation of expression because its ban on campaign contribution by persons "substantially interested in the gaming industry" can only be – and is – justified in connection with the *message* that such contributions would send: that the recipient of such contributions is supported by persons with substantial interest in the gaming industry. Both the terms of the Statute

---

[2] The Court noted that "the Texas statute expressly prohibited only those acts of physical flag desecration 'that the actor knows will seriously offend' onlookers, and the former federal statute prohibited only those acts of desecration that 'cas[t] contempt upon' the flag." 496 U.S. at 315 (citations omitted).

and its remarkably direct legislative history demonstrate conclusively that it was exactly that message that was in the legislative cross-hairs.

The Statute itself provides that it seeks "to prevent the influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state." La. Rev. Stat. Ann. § 18:1505.2(L)(1). The legislative history illuminates that purpose. During Senate committee deliberations, and in response to inquiries about the size of the gaming industry's campaign contributions relative to other industries, Senator Dardenne – the chief sponsor of the legislation – replied:

> I just don't know the answer of what the relative percentages may be of all contributors. I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political campaign contributions.

Verbatim Transcript, Meeting of March 26, 1996, Senate Committee on Senate and Governmental Affairs, Louisiana State Senate (hereinafter, "La. Senate Hearings") at Amicus App. 11a.

Thus, the legislature was concerned that campaign contributions from persons connected with the gaming industry would send to the citizens of Louisiana a message that those contributors have an undue influence on the legislative process. To eliminate this possible perception of undue influence, the legislature simply prohibited the targeted persons from making any campaign contributions. The nexus between the perceived problem of undue influence and the legislative solution of prohibiting any contributions exists only because of "the symbolic expression of support evidenced by a contribution," and because a contribution "serves to affiliate a person with a candidate." *Buckley*, 424 U.S. at 21, 22. In other words, the Statute prohibited those contributions because of the *message* of support and affiliation contained in them. Accordingly, because the Louisiana Statute can only be justified by reference to the content of the regulated expression, it must be analyzed as a content-based regulation.

C. The Louisiana Campaign Statute Does Not Satisfy The Strict Scrutiny Standard Of Review For Content-Based Regulations Of Expression.

Content-based government regulation of speech is presumed unconstitutional unless the regulation is justified by a compelling governmental interest and is narrowly drawn to achieve that particular interest. *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*,

502 U.S. 105, 118 (1991) (citing *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987)). The Louisiana Statute's ban on campaign contributions by gambling interests fails to meet either requirement.

1. The Statute Cannot Be Justified By A Compelling State Interest.

When evaluating whether the interest offered by the state is either real or compelling, this Court's review has been searching. In *Simon & Schuster*, for example, New York's "Son of Sam" law required that an accused or convicted criminal's income from works describing the crime be first made available to compensate the victims of that crime. 502 U.S. at 109. New York argued that its interest was in "ensuring that criminals do not profit from storytelling about their crimes before their victims have a meaningful opportunity to be compensated." *Id.* at 119 (internal quotation marks and citation omitted). The Court rejected this claim:

> the Board has taken the *effect* of the statute and posited that effect as the State's interest. If accepted, this sort of circular defense can sidestep judicial review of almost any statute, because it makes all statutes look narrowly tailored.

Id. at 120. Instead, the state interest, was "compensating victims from the fruits of the crime" because the distinction between the proceeds of such criminal's "storytelling" and any of the criminal's other assets is irrelevant to the State interest in compensating the victims. *Id.* at 119-21. *See also Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987) (distinction drawn in content-based taxation of

magazines not justified by State interest in raising revenue through taxation because the press/non-press distinction was irrelevant to that interest); *Carey v. Brown*, 447 U.S. 455, 467-69 (1980) (State interest in preserving privacy by prohibiting residential picketing insufficient to justify State's ban on non-labor picketing because nothing in the labor/non-labor distinction bore on that interest).

Like those cases, the distinction drawn by the Louisiana legislature – gaming industry contributions *versus* non-gaming industry contributions – does not bear on the State's asserted interest in preventing influence or corruption "by special interests." La. Rev. Stat. Ann. § 18:1505.2(L)(1). "Special interests" are, of course, any group that advocates any position on any issue. Thus, adding the term to the Statute does not narrow the State interest at all. To be sure, a government interest in guarding against corruption, and the appearance of corruption, of the political process has been held sufficiently compelling to justify campaign contribution limits. *Buckley*, 424 U.S. at 26-27; *Shrink Missouri*, 528 U.S. at 390. Critically, however, that interest related to all contributions, independent of the nature or identity of the contributor.

Here, the Statute also takes the effect of the regulation – no gambling influence – and posits that as the legislative purpose. But the plain purpose is to avoid having the public think there might be undue influence. The legislative history plainly shows that contributions from the gambling industry were a campaign issue. La. Senate Hearings at Amicus App. 10a-11a (Statement of Senator Dardenne). That history also shows quite candidly that the legislature had no evidence at all of the level of such contributions, or how they compared to other industries, or even any allegations of corruption, although it had substantial allegations about other industries:

Senator Bagneris: Also you mentioned that it was narrowly tailored and Senator Ellington has pointed that out as well from the standpoint as to who it applies to but it's also narrowly tailored as to the industry that we're effecting and you said that given the history that we have in this state you feel that there is sufficient compelling reason for the state to narrowly tailor it to the industry. Would you not agree that given the history of the state we could just as easily include the insurance industry given the fact that the last two commissioners went to jail … or that we can include different aspects of the medical industry given the articles that have appeared in the paper, visa vie [*sic*] contributions and legislators involved? And we can expand this legislation if our concern is how contributions influence the legislative process?

Senator Dardenne: No, I wouldn't agree with that.... I would not be in favor and would urge that we not adopt amendments that sought to expand this prohibition. This is designed and it is directed to specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.

Senator Bagneris: I think the Supreme Court ruled the way they did given the New Jersey situation because of the number of elected officials that did go to jail that could be shown the influence there when you had

mayors going to jail, you had city councilmen going to jail, you had a governor going to jail and we haven't had one as of yet elected official go to jail in connection with the gambling industry or how it came to Louisiana or any of those things. I just wonder whether it would stand a Supreme Court scrutiny about the First Amendment rights given the differences in the two states.

Senator Jones: Perhaps this should be directed to the staff. Do we have any information at all regarding different industries contributions to political candidates to members of the legislature? For example, do we know for a fact that the gaming industry has contributed more to members of the legislature than has a business or insurance companies or trial lawyers? Do we know that?

Diane Burkhart: No sir, I don't have that information at hand.

Senator Jones: I think, Ellington said we could include trial lawyers. I don't think that's a good idea. But, I am interested in finding out since one of the questions the chair has raised is obviously if we're going to narrowly tailor it to make sure that there's not undue influence or a disproportionate amount of contributions to have to participate in the process. Do we know, for example, that a half million dollars has been contributed by gaming to members of the legislature in the

> House and the Senate and we know that $3 million has been contributed by business then I'd be interested in knowing that so that we can really look at who is influencing the legislative process.
>
> Diane Burkhart: Senator, I'm not aware.... I'm not aware as to whether the campaign contribution reports necessarily identify contributors by vocation or employer or their business source....

La. Senate Hearings at Amicus App. 7a-9a. It is also significant that this bill was a substitute for the original bill, which would have prevented candidates from accepting contributions from gaming interests. *Id.* at Amicus App. 2a. That approach was dropped because, the legislature decided, the candidates might not know whether the contribution was from a gaming interest. Of course, if they did not know, the contribution could hardly influence the legislation. But the concern was the appearance of any influence, undue or not.

While preventing corruption may well be a compelling state interest justifying some limitation of campaign contributions from all persons, banning a specific industry from speaking because of fear of political backlash is surely not. Those who are substantially involved in gaming businesses and their spouses have the same right to exercise their political speech rights as anyone else. Thus, no compelling interest justifies the Louisiana Statute.

2. The Statute Is Not Narrowly Drawn To Achieve A Compelling State Interest.

Nor is the Louisiana regulation narrowly drawn to achieve the asserted state interest. Significantly, campaign contributions for all Louisianans are already limited. *See* La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a) (limiting citizen and corporate contributions). Those provisions apply to the citizens and corporations targeted by the gambling-specific regulation at issue here.

The Louisiana Statute is under-inclusive because it singles out the gambling industry when other industries pose the same or a higher risk of corruption. Despite the use of the general term "special interests" in the statement of legislative purpose, the Statute targets only those persons "substantially interested in the gaming industry in the state." La. Rev. Stat. Ann. § 18:1505.2(L)(1). It limits the prohibition on campaign contributions to licensees of riverboat or casino gambling operations; holders of interest in gambling businesses; directors, officers, trustees, partners, and senior and key employees of such businesses; and the spouse of any such individual. La. Rev. Stat. Ann. § 18:1505.2(L)(3). No other industry is targeted; no other "special interest." Indeed, interestingly, the Statute does not even cover all gambling interests. In the Senate Committee debate, one member questioned whether race tracks or lotteries would be affected: "I mean, the governor is just focusing on casinos and video games, not lottery and race tracks. Right?" La. Senate Hearings at Amicus App. 16a.

Debate over this measure also included substantial questions about why other industries were not targeted. *See* La. Senate Hearings at Amicus App. 7a-11a. As noted

earlier, Senator Bagneris, for example, pointed out that if a history of corruption justified the regulation, then other industries were at least as worthy of the legislature's special attention as the gaming industry. *Id.* at Amicus App. 7a-9a. Similarly, in the House committee deliberations, Representative Copelin commented that "if a single industry is to be singled out, it should be done fairly," and noted that he had introduced a bill that "would prohibit all corporations from contributing to campaigns and allow only contributions from natural persons." Committee on House and Governmental Affairs, Minutes of Meeting, 1st Extraordinary Session, 1996 (April 11, 1996) at Amicus App. 23a. But these objections did not lead the legislature to make the bill more inclusive. As it stands, then, the regulation is plainly under-inclusive.

It is also over-inclusive. First, it is a *ban*, not a limit. Thus, it does not level the playing field to avoid *undue* influence. Instead, it ejects a specific group of people from the playing field altogether. Second, the ban applies to *any* campaign contribution by those persons deemed substantially interested in the gaming industry in Louisiana, made to *any* candidate or political committee that supports or opposes a candidate, for *any* purpose. La. Rev. Stat. Ann. § 18:1505.2(L)(2). Thus, it is not designed to limit the gambling forces' influence over gambling regulators, for example. Indeed, the ban is not tied in any way to contributions that would relate to influence over gambling. Rather, it prevents even political contributions to political committees that advocate for environmental issues or health care, if the committee happens to support or oppose a candidate.[3] *See* La. Rev. Stat. Ann. § 18:1505.2(L)(2). The

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[3] A "political committee" is defined in the Louisiana Election Code as "two or more persons, other than a husband and wife, and any

Statute's ban reaches issue-focused advocacy that poses no risk of undue influence on the legislature, and limits the targeted persons' freedom of expression well beyond the limits of preventing corruption.

Thus, the Louisiana regulation cannot be justified by a compelling state interest, and is not narrowly drawn to achieve such an interest. It should be invalidated.

II. THE LOUISIANA CAMPAIGN STATUTE IS A VIEWPOINT-BASED REGULATION WHICH VIOLATES THE FIRST AMENDMENT.

The Louisiana Campaign Statute is not only content-based, it is also a viewpoint-based regulation because it singles out for regulation only the most visible *pro*-gambling voices in Louisiana. The First Amendment prevents the government, however, from proscribing speech or expressive conduct because it disapproves of it. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). Therefore, the Louisiana Statute is also unconstitutional as a viewpoint-based restriction on expression.

A. The Statute Is A Viewpoint-Based Limitation On Expression Because It Targets For Regulation Only One Side Of A Public Debate.

The regulation here selectively targets a group that represent only one side of the controversial gambling issue in Louisiana. The campaign contribution ban applies only to

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corporation organized for the primary purpose of supporting or opposing one or more candidates, *propositions*, recalls of a public officer, or political parties...." La. Rev. Stat. Ann. § 18:1483(14)(a)(i) (emphasis added). The definition plainly reaches "issue" campaigning, and not just campaigns for political office.

licensees, owners, and senior and key employees of gambling businesses, and their spouses. La. Rev. Stat. Ann. § 18:1505.2(L)(2). These are the individuals and entities most interested in the success of gambling in Louisiana, and thus most likely to advocate the pro-gambling views. Indeed, that is why the legislature selected them. But persons and organizations opposed to the gambling industry are not similarly banned from the political expression of making a campaign contribution. In banning only likely pro-gambling contributors, therefore, the Louisiana legislature has indicated its disfavor for the pro-gambling viewpoint. The Statute, therefore, must be analyzed as a viewpoint-based regulation.

B. The Statute Contravenes The First Amendment As A Viewpoint-Based Regulation Of Expression.

Neutrality in government regulation of expressive activities is the bedrock of the First Amendment. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein"). *See also Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is [] an egregious form of content discrimination"); *Turner Broad. Sys.*, 512 U.S. at 642 (viewpoint discrimination is subject to "the most exacting scrutiny").

Viewpoint-based government regulations of First Amendment activities have been held invalid even in traditionally less protected – or even unprotected –

categories of expression. In a case involving government-funded speech, for example, the Court invalidated a regulation prohibiting Legal Services Corporation lawyers from raising challenges to federal welfare laws. *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 546 (2001). The Court held that the regulation was viewpoint-based because it tried to "exclude from litigation those arguments and theories Congress finds unacceptable." *Id.* *See also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 512 n.20 (1996) (striking down a traditionally less-protected commercial-speech regulation that bans advertising of retail liquor prices except at the place of sale); *R.A.V.*, 505 U.S. at 394 (invalidating a bias-motivated disorderly conduct ordinance construed narrowly to ban only constitutionally unprotected "fighting words" because it singled out speech expressing racial, religious or gender intolerance); *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028, 1041 (E.D.N.Y. 1993) (exclusion of attorneys – but not clergy or press – from detention center because of what they were expected to say was viewpoint-based violation of First Amendment).

Here too, the Louisiana legislature impermissibly singles out a particular viewpoint for its ban. In prohibiting campaign contributions by only those most likely to advocate a specific point of view, the Statute punishes them by denying them the ability to participate in the political process through "the symbolic expression of support evidenced by a contribution." *Buckley*, 424 U.S. at 21. Nor can it be argued that the statute is adequate because it allows others with pro-gambling views to make contributions. That others can speak has never been held a remedy for depriving some of the chance to express their views; quite the opposite is true. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) ("it has been the judgment of this Court that the possible

harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted"). The legislature specifically targeted pro-gambling voices because it concluded that the public disapproved of that viewpoint being heard. *See* La. Senate Hearings at Amicus App. 11a. The notion that speech of a particular viewpoint can be accorded less protection "as popular opposition to that speech grows is foreign to the First Amendment." *Eichman*, 496 U.S. at 318. Accordingly, because the Louisiana Campaign Statute prohibits campaign contributions by only those who hold pro-gambling views, it should be declared unconstitutional.

CONCLUSION

Louisiana's ban on campaign contributions by persons substantially interested in the gambling industry is a content-based regulation of protected expression that cannot be justified by a compelling state interest, and is not narrowly drawn to achieve such interest. Moreover, the regulation is impermissibly viewpoint-based in that it targets only one side of a public debate. Therefore, it should be declared unconstitutional.

Respectfully Submitted,

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October 23, 2002

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APPENDIX

Louisiana State Senate

Committee on Senate and Governmental Affairs

VERBATIM TRANSCRIPT
MEETING OF MARCH 26, 1996

I. CALL TO ORDER

A meeting of the Senate Committee on Senate and Governmental Affairs was held on Tuesday, March 26, 1996 at 10:00 a.m. in Senate Committee Room F at the State Capitol in Baton Rouge, Louisiana. The meeting was called to order by the chairman, Senator Jay Dardenne, at 10:07 a.m.

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III. LEGISLATION TO BE CONSIDERED

Senate Bill 12 by Senator Dardenne

Senator Dardenne: The first bill is Senate Bill 12 which is the prohibition on contributions from certain entities in the gambling world. Let me basically run through the highlights of this bill for you as you look it over yourself. Basically the bill prohibits the direct or indirect contribution or a loan or transfer to a candidate for a major or district office. We have, in fact is this the bill we're going to have a substitute on before I get started? Alright, why don't you pass that out I'm sorry if we have copies of that. It's in there? Okay.

We're going to handle this bill by substitute because as you know this is one of the bills that was circulated prior to the session with a request for comments from people. We got some very good suggestions from people on this bill because as you all know it's a difficult bill to convect and because there were some significant amendments we decided to do this by substitute and so we will be considering the substitute bill this morning. The primary difference from the original bill and the substitute bill is that the substitute bill basically is designed to punish the giver. If the gambling entity makes a contribution it is going to be subject to scrutiny by the oversight regulatory board for gambling and is designed to basically be punitive toward that contributor if they give to someone and they are prohibited from giving. The main concern that has been expressed is that a recipient may very well unknowingly, and this addresses one of the concerns Dennis raised yesterday, accept a contribution no knowing someone is in the gambling world at all and that is a legitimate concern because of the penalties that are going to be visited upon the recipient. And so the approach we're taking is to provide some significant punitive measures to the giver and to provide that if it is brought to the attention of the recipient then that money is going to . . . (inaudible word) to the state. In other words, they could not keep it in their campaign. The money would have to be transferred over to the state if the contribution is actually made. That's the intent of the bill and we're attempting to track as well in this legislation what was done in New Jersey which is the only state we know of that has imposed a statutory ban on gambling contributions. To make this bill constitutional, it has to be narrowly tailored, it has to address what is believed to be a compelling state interest and I believe we can satisfy that here in Louisiana about the concern of the gambling industry's impact on the legislative process. But we want to

be careful in this legislation that it is not over-reaching and that it is narrowly drawn and that is what we're seeking to do with the substitute bill. The people who would be prohibited from giving under the bill regarding video poker would be anyone who is licensed as a manufacturer of gaming devices, a distributor of gaming devices or a device service entity or anyone who owns a truck stop with video poker machines or a horse track or OTB parlor with machines. This would also extend to the spouse of anyone who fits into that category. Same would hold true as to riverboats. Anyone who is licensed to conduct gaming aboard a riverboat or is a distributor or supplier of gaming devices or a manufacturer of these gaming devices. And as to the land based casino, any person who holds the casino operating contract or again is licensed as a distributor or manufacturer of gaming devices or anyone who owns a casino. The ownership interest would address a 10% owner. Anyone who had a 10% or more ownership interest would be applicable to these provisions. And the bill would also extend to an officer, director or management level employee of any such entity. Now that's the highlights of the bill. Let me see who we've got that wants to speak. We have for information only Tom Casey with Harrah's. In support of the bill, Harold Suire, Stephanie Desselle from Council for A Better Louisiana and the People's Agenda. In support of the bill Catherine Patterson from AARP, Mildred Marsal from AARP and available for information is Maris McCrory at the Ethics Administration. Nobody's against this bill? We don't have any. Information only from Mr. Casey but I don't have any cards in opposition, but Senator Ellington.

Senator Ellington: I come back to, as I appreciate this we say major candidates or district offices? Is that who we're talking about? We're not talking about any mayor

candidates or any councilman or any of these kinds of people that could be just as influenced as the legislature?

Senator Dardenne: That's correct. In this bill we're dealing with major offices and district office candidates again in an attempt to narrowly tailor the legislation to address what is believed to be a compelling state interest which would be the problems we've experienced at the state level with the gambling industry. That is why I think it is important that we try and narrowly tailor this bill to make it constitutional.

Senator Ellington: You do think it needs to stay narrow?

Senator Dardenne: I do. I do and that's why we've drafted it as such.

Senator Ellington: I'm not sure I agree but okay. I'll take that.

Senator Jones: Mr. Chairman, I understand, I think I understand your rationale with respect to trying to keep it narrowed and focused and all that but if we pass these local options and local governing authorities are called upon to call these elections would it not be wise to in light of that to include some of the local perhaps policy makers?

Senator Dardenne: I don't disagree at all with your concern and I think once we get into local option you certainly have the potential for there to be situations where gambling contributions to local governing officials could be even more keen. My concern though is in narrowly tailoring the legislation to address a compelling state interest. I think an argument can be made that the compelling state interest argument would extend as well to local government officials.

I'm not against it in concept. I think as we've looked at the case law and we've looked at the particularly the Supreme Court decision that we've got to deal with, with campaign contributions, our thought is the most appropriate approach is this. What are you telling me? Ms. Burkhart is pointing out that district office, the definition of district office would be covered in this legislation does extend to any office that would be elected parish wide. It would not go so far as an individual council member, an individual police juror, but anyone who would be elected on a parish wide basis would fall under the definition of district office that is in the bill now.

Senator Ellington: A sheriff.

Senator Dardenne: A sheriff, a mayor, anyone else, parish presidents.

Senator Ellington: Not a mayor.

Senator Dardenne: Well, some mayors. In Baton Rouge, the mayor but in smaller communities a parish president, a mayor.

Senator Ellington: I still say if we're going to clean up, if we're going to start why don't we, I mean we're just sweeping it to another place. Why don't we get it all? If we're taking in sheriffs and clerks and all those people why don't we include the mayors and the police jurors and if there's a good reason you know I'm fine but I don't know what it is yet. That good reason I'm talking about.

Senator Dardenne: And I tried to explain the basic reasoning that I think the lawyers have looked at in terms of the

compelling state interest. I'm certainly not going to suggest to you that if we put them in there the bill is unconstitutional because I would not concede that. I think it would still be constitutional. I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen. So I think we could support the constitutionality of the bill in its initial draft. We attempted to make it narrow though for just district offices, major offices, and those who would in essence focus on the statewide impact of gambling as opposed to the local nature of gambling. I think the argument is very well made that as we move more toward local option or toward letting local governments, particularly elected officials, make decisions whether or not something goes on the ballot we would capture in advance any concerns about whether the gambling contributions would infiltrate that market. So, I'm certainly willing to consider amendments if you deem them appropriate to extend beyond that.

Senator Ellington: Well I do and then we'll see if that's okay with the committee and we'll see what we think. But I just feel like if we're going to take in some, let's go ahead and take in everybody, take in the whole thing.

Senator Bagneris: You mentioned a Supreme Court case and I'm assuming that you're talking about possible First Amendment rights conflict that this legislation would have. Do you feel comfortable with the bill as written doesn't have a First Amendment problem?

Senator Dardenne: Yes, I do. I think we've got to be

cognizant of the Buckley case we're talking about and the Buckley case is the case on political campaigns and the fact that political expression is at the heart of the First Amendment and that anything you do to undermine political speech or campaign contributions is going to be subject to strict scrutiny, compelling state interest tests and I think this bill would have to be measured by that standard when it is looked at constitutionally. I think this bill can pass that muster. I think the New Jersey Supreme Court has already allowed that to take place in the situation in New Jersey where casino contributions specifically were barred and I think we can make that same argument here in Louisiana. I think this is something we ought to do. I'm certainly not going to suggest to you it's not going to be challenged constitutionally because a lot of what we do is going to be subject to challenge but I think a lot of time and thought has been given to this bill and the staff has worked on it carefully to try and craft it so that it would pass constitutional muster and I think it does.

Senator Bagneris: Also you mentioned that it was narrowly tailored and Senator Ellington has pointed that out as well from the standpoint as to who it applies to but it's also narrowly tailored as to the industry that we're effecting and you said that given the history that we have in this state you feel that there is sufficient compelling reason for the state to narrowly tailor it to the industry. Would you not agree that given the history of the state we could just as easily include the insurance industry given the fact that the last two commissioners went to jail, not counting the one that's presently serving or that we can include different aspects of the medical industry given the articles that have appeared in the paper, visa vie contributions and legislators involved? And we could expand this legislation if our concern is how

contributions influence the legislative process?

Senator Dardenne: No, I wouldn't agree with that and I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state. That, I think, can be significantly differed from what happened in the medical situation or the insurance situation where individuals got indicted based upon their actions while serving in office attempting to take advantage of their particular power, whereas I think in this particular case we can look unfortunately to some things that have allegedly happened from an industry standpoint on how gambling came to be in Louisiana. I think that can be differentiated. I think it should be differentiated and that's why the bill is directed at the gambling industry. I would not be in favor and would urge that we not adopt amendments that sought to expand this prohibition. This is designed and it is directed to specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.

Senator Bagneris: I think the Supreme Court ruled the way they did given the New Jersey situation because of the number of elected officials that did go to jail that could be shown the influence there when you had mayors going to jail, you had city councilmen going to jail, you had a governor going to jail and we haven't had one as of yet elected official go to jail in connection with the gambling

industry or how it came to Louisiana or any of those things. I just wonder whether it would stand a Supreme Court scrutiny about the First Amendment rights given the differences in the two states.

Senator Jones: Perhaps this should be directed to the staff. Do we have any information at all regarding different industries contributions to political candidates to members of the legislature? For example, do we know for a fact that the gaming industry has contributed more to members of the legislature than has a business or insurance companies or trial lawyers? Do we know that?

Diane Burkhart: No sir, I don't have that information at hand.

Senator Jones: I think, Ellington said we could include trial lawyers. I don't think that's a good idea. But, I am interested in finding out since one of the questions the chair has raised is obviously if we're going to narrowly tailor it to make sure that there's not undue influence or a disproportionate amount of contributions to have to participate in the process. Do we know, for example, that a half million dollars has been contributed by gaming to members of the legislature in the House and the Senate and we know that $3 million has been contributed by business then I'd be interested in knowing that so that we can really look at who is influencing the legislative process.

Diane Burkhart: Senator, I'm not aware. I think Ms. McCrory is out there somewhere. I'm not aware as to whether the campaign contribution reports necessarily identify contributors by vocation or employer or their business source. I know that was at one point discussed, but

in order to make that distinction that information would have to come from the supervisory committee as they are the holders of campaign contribution records and I assume in order to make that distinction that's information they would have to have. I don't know whether the reports require that information now or not. I don't think they do.

Senator Jones: I don't know. I agree that they probably don't require that but I think there is information that I personally would like to have and I think other members of the legislature might want to look at, not as relates to what opposition is on this issue but certainly we want to know exactly who was making what contributions from what industries so we can know exactly as to how it has been impacted. And I think it is fairly easy to discern if a senator receives a check from State Farm you know that's an insurance check or if they receive a check from ABC Truck Stop, video poker or whatever, that's a gaming check. So this Senate ought to have the wherewithal to produce that kind of information so we could know.

Diane Burkhart: I think it's a question of what the law requires be reported and I would suggest that to do so would certainly, I estimate, be prospective only in that the existing information with regard to campaign contributions is probably not in the record and may involve amending the law in order to require the collection of that kind of information.

Senator Dardenne: I think what Senator Jones is saying is that you could probably get it even without a designation of what the entity was but I don't know that that is -- I mean you talk about a monumental task is pouring through everybody's campaign finance report and trying to do that.

Some may have done it. We may all know individually from where our contributions come but I don't know that that information is as readily available as it might seem to be but I understand the question you ask. I just don't know the answer of what the relative percentages may be of all contributors. I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political campaign contributions. Any other questions, comments? Senator Greene.

Senator Greene: I just move we report the bill favorably.

Senator Ellington: I have an amendment.

Senator Greene: Okay, go ahead.

Senator Dardenne: Yes, if you'll hold that motion. Senator Ellington has an amendment. If you would offer that amendment.

Diane Burkhart: Senator Ellington is offering for the purposes of committee consideration Senator Ellington is offering an amendment to the substitute bill. If it is adopted

and then the bill is otherwise reported by the substitute you have in front of it the substitute will contain this change. On page 2 of the substitute, line 11, delete the words "for a major or district office" and on page 2, line 13, delete the words "for a _____ or district office".

Senator Ellington: Again, I just feel like that you know if we're going to stop it then we need to stop it and I think with the local option and as much influence as local government could have with the gambling industry I just feel that that would be appropriate.

Senator Dardenne: Senator Ellington offers the amendment to make it applicable to any candidate for office, as I appreciate the amendment. Is that correct? Discussion on Senator Ellington's amendment. Is there any? Diane, do you have any?

Diane Burkhart: I'm sorry. I understood you to ask a question. I didn't quite hear.

Senator Dardenne: No, I didn't ask one. I don't believe. I said is that correct. Kind of a rhetorical question, I guess. My appreciation is the amendment seeks to make this applicable to any candidate for public office.

Senator Ellington: That's correct.

Senator Dardenne: And of course the point being that we're going to make it extend to anyone who could possibly be influenced by the gambling industry at even a local level, not just a legislative level. Any further discussion or questions on the amendment? Is there any opposition to the amendment? Without opposition the amendment is adopted.

Further discussion on the substitute bill as amended? Senator Casey. Did you fill out a card? Yes. This is for information only.

Tom Casey: Mr. Chairman, members of the committee. The only reason I submitted a card. I spoke to the chairman prior to commencement of this meeting and indicated to him what I view as a possible problem and that's with regard to the definition of management level employee. I don't know where that's defined and I'm not sure. I don't know what a management level employee is unless you try and tie it down. You're dealing with a criminal statute and those were criminal practitioners realize that if you're going to have a prosection in this area of the law it has to be something rather firm that the district attorney can get his teeth into and without any questions whatsoever point to this one as definitely a management level and this one a definitely not management level. So I think, I suggested to the chairman the possibility of inserting the words "senior management level employee." I'm not even sure if that does it but I think I see the intent of the bill is to get the high level hierarchy members of whatever organization this is talking about.

Senator Ellington: Let me ask a question. To me that means these people who are paid a salary versus people who are paid by the hour. Is that not a decent definition for management level?

Senator Dardenne: I'm not sure it is, Noble, and I was talking earlier. I think the concern is well founded but at least from my standpoint on the intent of this we are trying to get to people who are in the hierarchy of the organization and you could certainly have a vagueness question if you have someone who has a designation of manager and say, for

example, they're manager of the motor pool if the boats may have a motor pool of vans or whatever and there may be some designations there. They're the manager of the fleet or they're the manager of the whatever restroom area may exist somewhere and then they may in their nomenclature call somebody a manager and that's not who we're trying to reach. We're trying to reach the people who are at the decision-making level and I do think the insertion of the word "senior" makes it clear who we're trying to get to. We're not trying to get to every single rank and file employee. We're trying to get to people who are in control positions, owners and then partners, directors, what have you, and management level people and I don't have any objection to that amendment. In fact, I'll offer for the sake of discussion, let's get it out there, I'll offer the amendment to insert the word "senior" on line 25 of page 3 and we can talk about it a little more. But I think it is an appropriate observation based upon who we're trying to direct this at.

Senator Ellington: To you, Mr. Casey, is everyone paid by the hour or don't you have salary people and then hourly people after that?

Tom Casey: I would think in most organizations you have salaried people.

Senator Ellington: Are they not considered the management?

Tom Casey: I don't believe so. I think most people who receive a set salary who are not at all management level employees whether they be a secretary or a dealer or what have you. I gotta tell you honestly I don't know which ones are hourly and which ones are salary.

Senator Ellington: Okay. I thought maybe you might.

Tom Casey: There are some people who are salary who are not managerial. This is a tough question. I know what Senator Dardenne really means and how you define it is another problem. I think we're probably talking about management level people who establish policy and report directly to the president or CEO of an organization and in most organizations these will be vice-presidents anyway but not in every organization. So I think in all fairness to the management level personnel that runs the motor pool, as Senator Dardenne indicated, you may to keep preventing presenting problems of vagueness and you if you want to purposely endanger any employees and make them susceptible to indictment.

Senator Dardenne: I agree.

Tom Casey: But that may solve the problem.

Senator Dardenne: The amendment is to refer to "senior management level employees." Yes, Diane. **END OF SIDE A.**

TAPE 1, SIDE B

Senator Dardenne: Well why don't we do this. Well let me withdraw that amendment and resubmit to say "senior management level or key employee" and then we're going to key into a definition in the Casino Act that refers to a key employee to make it clear that we're directing this at key employees as well as senior management level employees to the extent that there may be some differentiation between

them. Thank you, that's a good addition. So the amendment will be "senior management level or key employee" added to the list that's already there. Is there any further discussion on the amendment? Is there any opposition to that amendment? The amendment is adopted. Any further discussion on the bill?

Senator Bagneris: Yea, I have a question. The bill applies to all gaming or gambling however you want to phrase it so you would not be allowed to accept a check political contribution from say race track owners.

Senator Dardenne: Who have OTBs or video poker devices at the track which is pretty much all of them.

Senator Ellington: That's all of them.

Senator Dardenne: That's correct.

Senator Bagneris: You wouldn't be able to accept a check from race track owners.

Senator Dardenne: That's right.

Senator Bagneris: Although the race track has been excluded from the bill dealing with gaming industries and eliminating not expanding. I mean, the governor is just focusing on casinos and video and not lottery and race tracks. Right?

Senator Dardenne: That's right.

Senator Bagneris: Okay. How about lottery officials or grocery store owners that are selling lottery tickets. How are

they affected?

Senator Dardenne: They should not be affected as I appreciate the way the bill is drafted. And of course just going back to your race track question, of course the reason there is that the race track is now in the business of video poker and to the extent that they have the extensive video poker presence there they have been included in this bill.

Senator Bagneris: No, I'm not going to oppose the bill. I've got to do some research on kind law and I've got other friends of mine on the Senate Floor who know a lot more about constitutional law than I do. I raise the questions and there are some vagueness problems with the bill but I can tell it's going to get out of committee and I'm not going to oppose it.

Senator Dardenne: Alright, further questions, comments. Senator Greene moves that the substitute bill be reported favorably as amended. Is there any opposition to the bill? Reported by substitute, I'm sorry. That the bill be reported by substitute. Without opposition the bill is reported by substitute.

Unidentified Question:

Senator Dardenne: It's available right now. Not as amended. When will that be available?

Diane Burkhart: This afternoon. You'll have to have it this afternoon to accept the committee's report.

Senator Dardenne: It doesn't have a number yet. It won't have a number yet but it will be the substitute bill to Senate

Bill 12.

Senator Ellington: You know what the changes are.

Senator Dardenne: Senate Bill 68 by Senator Hainkel. I know Senator Hainkel is tied up in Jud A. Senate Bill 65 by Senator Short. Is Senator Short here? Senate Bill 81 by Senator Bean. Senate Bill 103 by Senator Greene. Where did Senator Greene go? We'll come back to those bills if the authors show up and would like the bills heard. Senate Bill 116 by Senator Cox. And if you would, if the sergeant at arms could locate Senators Hainkel, Short, Bean or Cox, if they'd like to have their bills heard and Senator Lentini, we will hear them. If you would get Senator Lentini please and we'll hear Senate Bills 117 and 118.

Senator Ellington: Are these other contributions bills basically the same as this substitute?

Senator Dardenne: I don't know, Noble. I'm not sure how close they are.

Senator Ellington: Did that bill say anything about loans?

Senator Dardenne: Yes. It prohibited loans, too. Do we have the amendments to 130 yet, the bill that we were working on yesterday? Why don't we go on and do that while we're waiting for Senator Lentini.

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COMMITTEE ON HOUSE AND GOVERNMENTAL AFFAIRS

Minutes of Meeting
1st Extraordinary Session, 1996
April 11, 1996

I. CALL TO ORDER

Representative Charles D. Lancaster, Jr., chairman of the Committee on House and Governmental Affairs, called the meeting to order at 9:25 a.m. in Committee Room 5. The secretary called the roll.

* * * *

III. DISCUSSION

Senate Bill No. 194 by Senator Dardenne

Senate Bill No. 194 prohibits gaming persons and entities from making campaign contributions, loans, and fund transfers. The bill was presented by Senator Dardenne with assistance from Mr. Rodney Braxton, Office of the Governor, P. O. Box 94004, Baton Rouge, Louisiana.

Senator Dardenne pointed out that he has attempted to address the constitutional issue of prohibiting certain individuals from making campaign contributions in the drafting of Senate Bill No. 194. He noted that in order to pass constitutional scrutiny, such legislation must be very narrowly tailored and specific in what it allows and does not allow. He stated that the prohibition in the bill is limited to those who can be identified as being directly involved with

the gambling industry at an instrumental or management level. Specifically, he explained, the bill prohibits individuals in video poker, riverboats, and the casino who are licensees, manufacturers of gaming devices, distributors of gaming devices, licensed as device service entities, or in the case of video poker, an owner of a truckstop, horsetrack, or offtrack betting parlor with machines from making any campaign contribution or any loan to any candidate for public office. He reported that the Senate amended the bill to also include lobbyists who represent the gambling industry in the prohibition. Further, any individual who owns 10% or more interest in any of the listed industries would be prohibited from making campaign contributions. He stated that the bill does not extend to rank and file employees of these industries, nor to restaurants and bars which have video poker machines in their establishments.

The Honorable M. J. Foster, Governor of Louisiana, P.O. Box 94004, Baton Rouge, Louisiana, testified in favor of the bill. He stated that as long as there is a gaming industry in the state, prohibiting those involved from influencing the business of the state by making campaign contributions would greatly help encourage public confidence in government. He noted that there have been constitutional questions raised in the past on the concept of singling out an industry and prohibiting their contributions and stated that other states have addressed the question by finding that the gaming industry is different from other business because of the money involved, its operation, and its influence on the political process on both the state and local levels.

Representative Copelin stated that he supported the bill but said that it is overly broad in its prohibition. He asked for clarification from the staff as to whom is included.

Ms. Patricia Lowrey-Dufour, staff research analyst, explained that besides those who are licensed to distribute or manufacture gaming devices or to operate gaming facilities or activities, owners of 10% direct or indirect interest in any of such entities, and any holding, intermediary, or subsidiary company of such entities, and any officer, director, trustee, or partner of such holding, intermediary, or subsidiary company would be prohibited from contributing. Further, any entity in which the individual or legal entity holding the license or who has interest in the individual or legal entity holding the license is an officer, director, trustee, or partner is prohibited from contributing. Finally, the spouse of any listed person and lobbyists acting in a representative capacity for any listed person are included in the prohibition.

Representative Copelin stated that while the intent of the legislation is to prevent the use of another entity in making a contribution that someone could not legally make directly, which concept he said he supports, the bill includes some who are not easily identifiable. He pointed out that an officer of a bank or part owner in another unrelated business who is also an officer or board member of a contracted entity which runs a casino would be included in the prohibition.

Senator Dardenne disagreed that this was the case and stated that such was not his intention.

Ms. Lowrey-Dufour agreed with Representative Copelin that the provisions linking any officer, director, trustee, or partner of any holding, intermediary, or subsidiary company to the gaming entity would be interpreted as a prohibition on such person contributing.

Senator Dardenne stated that indirect ownership interests

should remain in the prohibitions of the bill but that if the situation described by Representative Copelin is included, he would support an amendment to clarify the definition of indirect ownership.

Representative Hunter inquired about the penalty provided for in the bill.

Senator Dardenne explained that the penalty for violation of the act is $5,000, and added that any such penalty would be focused on the gambling entity who is aware of what its gambling involvement is rather than the recipient.

Representative Lancaster added that in addition to the penalty, the prohibited contribution would escheat to the state.

Representative Hunter asked if any state other than New Jersey has enacted law prohibiting campaign contributions from gaming interests. Senator Dardenne answered that no state has done so, adding that the similar law in New Jersey had been challenged in Soto vs. State of New Jersey and upheld by the New Jersey Superior Court.

Senator Dardenne pointed out that Buckley v. Valeo, 424 U.S. 1, 1976 Supreme Court, had established that because of free speech protection, campaign finance contributions are subjected to the strict test of compelling state interest. In the case of Senate Bill No. 194, he said, the compelling state interest would be the need to prevent abuse in contributions form gambling contributors, adding that such potential for such abuse has been established.

Representative Vitter noted that under Louisiana law, a 25%

ownership is generally recognized as a controlling interest and that allowing someone to circumvent the law by creating another corporation between his personal interests and the gambling entity should be protected against. Referring to the scenario described by Representative Copelin, he stated that he would support an amendment to clarify the definition of layered or indirect business interest while continuing to prevent control through layers of ownership interest.

Representative Copelin commented that if a single industry is to be singled out, it should be done fairly. He noted that he had introduced a bill that would prohibit all corporations from contributing to campaigns and allow only contributions from natural persons. He asked Senator Dardenne if he could support such a concept.

Senator Dardenne responded that he would oppose the bill since it is an appropriate exercise in the campaign process for political action committees who represent people and for corporations to be able to give to campaigns. He noted further that since the inception of legalized gaming in the state, the question has been debated whether the industry is different from other businesses in that its success is based on the weakest people's desire to take risks and lose money and that it was created and is regulated by the legislature.

Representative Lancaster added that if Representative Copelin's bill were enacted and corporations were prohibited from contributing, only wealthy candidates would have any chance of being elected.

Senator Dardenne commented that differentiation could also be made on the grounds that the Louisiana Constitution considers gambling to be an institution that the state wants to

suppress.

Representative Montgomery stated that a lawmaker's ability to be influenced or bought is wrong regardless of who is wielding the influence. He asked why the liquor industry and others that are frowned on by some should not also be prohibited from involvement in campaigns.

Senator Dardenne answered that a compelling state interest in suppressing the liquor or other regulated industries could probably not be proved.

Representative Copelin announced his intention to withdraw his support for making any clarifications in the bill and instead support reporting it out of committee in its current version.

Representative Vitter proposed an amendment which would remove the contribution prohibition on any person or entity of which the persons listed in the bill is an officer, director, trustee, or partner, or any other officer, director, trustee, or partner, stating that such prohibition was unintended.

Representative Winston supported the amendment, pointing out that all provisions intended by the author should be included in the committee process before a bill is passed on for debate by the House.

Representative Vitter offered a motion that the amendment be adopted, to which Representative Copelin objected, whereupon the secretary called the roll. The amendment was adopted by a 7-4 vote with Representatives Bruneau, Dorsey, Lancaster, Montgomery, Scalise, Vitter, and Winston voting yea and Representatives Copelin, Green, Hunter, and

Willard-Lewis voting nay.

Representative Lancaster offered an amendment to provide for an effective date of July 1, 1996, and made a motion that such amendment be adopted. There being no objection, the amendment was adopted by a vote of 11-0 with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea.

Representative Bruneau inquired if Senate Bill No. 194 would preclude his contracting with the New Orleans Fairgrounds to provide space and catering for fundraisers.

Senator Dardenne stated that it would not, as long as those services are paid for and not considered an in-kind contribution.

Representative Lancaster offered a technical amendment and moved that it be adopted. There was no objection to the motion, and with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea, the technical amendment was adopted by an 11-0 vote.

Representative Lancaster inquired what effect the registered lobbyist provision would have on a registered lobbyist who is a member of a law firm relative to his partners.

Senator Dardenne responded that it is his understanding that the specific registered lobbyist could not contribute but that he does not believe that his partners would be so prohibited. Senator Dardenne noted that the Senate had amended the bill to add the provision and that he would prefer the bill be more

narrowly drawn so as to avoid constitutional challenge. He stated that current law prohibits one person or entity from contributing to another person or entity for the purpose of making a third-party contribution.

Representative Copelin asked if a law firm representing a casino could contribute.

Senator Dardenne answered that there is no prohibition in Senate Bill No. 194 to prevent such a transaction or similar transactions by service providers and vendors not peculiar to gaming.

Representative Copelin commented that the intent to close loopholes in the law is inconsistent.

Senator Dardenne responded that while arriving at a definition of gambling interests is very difficult, he would rather attempt to address the situation with a narrowly tailored bill than take no action.

Representative Copelin commented further that a narrowly tailored prohibition would instead apply only to those individuals who are licensed by the state police for gaming.

Senator Dardenne agreed that such prohibition would indeed be more narrow than the provisions of Senate Bill No. 194 but added that such prohibition is not enough.

Representative Bruneau stated that he disagreed with both views since all bars and restaurants with video poker machines are licensed by state police.

Representative Bruneau stated that while he does not oppose

prohibiting a registered lobbyist representing a gaming interest from making a direct or indirect contribution on behalf of his employer, he opposes such provision with respect to lobbyists representing multiple interests. He noted that many lobbyists are in such a situation and would be adversely affected by the bill.

Senator Dardenne agreed that because current law disallows third-party contributions, the expansion could be removed from the bill. He noted that any such contributions would be reported and that the law must work within the confines of the constitution to be effective at all.

Representative Bruneau proposed an amendment to remove the prohibition on any registered lobbyist who represents the previously referenced gaming entities from making campaign contributions and offered a motion that such amendment be adopted. There was no objection, and with Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Montgomery, Scalise, Vitter, Willard-Lewis, and Winston voting yea, the amendment was adopted by an 11-0 vote.

Representative Scalise asked where a list of all prohibited contributors would be available for use by candidates. Senator Dardenne answered while that the Riverboat Gaming Commission and other regulators could provide such lists, information on everyone who has a 10% interest in gambling interests might not be available; he added that for this reason the punitive provisions are geared toward the giver rather than the recipient.

Representative Copelin offered a motion that the bill be reported with amendments to which there was no objection.

Representatives Bruneau, Copelin, Dorsey, Green, Hunter, Lancaster, Rousselle, Scalise, Vitter, Willard-Lewis, and Winston voted in favor of the motion, and Senate Bill No. 194 was reported with amendments by an 11-0 vote.

* * * *

Supreme Court, U.S.
FILED
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CLERK

No. 02-466

In The

Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

versus

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Louisiana

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI SUBMITTED BY THE STATE OF LOUISIANA AND THE SUPERVISORY COMMITTEE ON CAMPAIGN FINANCE DISCLOSURE

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OTHER CITATIONS

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I. INTRODUCTION

The Casino Association of Louisiana is before this Honorable Court seeking a Writ of Certiorari because the Louisiana Supreme Court upheld the constitutionality of La. R.S. 18:1505.2L that imposes a statutory ban on political campaign contributions from members of the state's gaming industry. *Casino Association of Louisiana v. State of Louisiana, et al.*, 2002-0265 (La. 6/21/02), 820 So.2d 494. The State of Louisiana and the Board of Ethics, as the Supervisory Committee on Campaign Finance Disclosure, opposes the granting of a Writ of Certiorari because there are no writ grant considerations presented by this case and because the Louisiana Supreme Court's decision is correct under the First Amendment to the United States Constitution.

This Honorable Court, in *Buckley v. Valeo,* 424 U.S. 1 (1976), and again in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 337 (2000), upheld the constitutionality of state legislative restrictions on campaign contributions from certain groups. In reliance on these rulings, the Louisiana Supreme Court upheld the constitutionality of La. R.S. 18:1505.2L, that prohibits the casino gaming industry from making campaign contributions to candidates and political committees that support or oppose candidates. The court found that Louisiana demonstrated that the statute is closely drawn to avoid unnecessary abridgment of associational freedoms, while providing a means of combating corruption and the appearance of corruption, a substantial state interest in Louisiana.

II. STATEMENT OF THE CASE

In 1996, the Louisiana Legislature legalized various forms of gaming. Coincident to the creation of the state's gaming industry, the legislature expressed its intention to prevent the corruption that is caused by the undue influence of the gaming industry on the election process. It therefore enacted a prohibition on campaign contributions

from persons with a substantial interest in the video poker industry, in riverboat gaming, and in the authorized land-based casino.

In *Penn v. State of Louisiana*, 99-2337 (La. 10/29/99), 751 So.2d 823, *rehearing denied* (La. 11/24/99), *cert. denied* (U.S. 5/15/00), the Louisiana statutes banning campaign contributions from video poker licensees were declared unconstitutional. A petition for a writ of certiorari was denied, without comment, by this Honorable Court on May 15, 2000.[1]

On September 20, 2000, the Casino Association and its individual members joined as plaintiffs in filing a Petition for Declaratory Judgment in the 19th Judicial District Court, East Baton Rouge Parish, Louisiana, based upon the Louisiana Supreme Court's decision in *Penn*, alleging that the legislative ban on campaign contributions from those in the riverboat and land-based casino industry are unconstitutional.

A trial was conducted on October 4, 2001, and the matter was taken under advisement. On October 30, 2001, the trial court rendered and signed a judgment, with reasons. The judgment was amended on December 4, 2001, declaring unconstitutional La. R.S. 18:1505.2(L)(3)(a)(ii), La. R.S. 18:1505.2(L)(3)(b)(c)(e) insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii) and 42 La. Admin. Code Pt. IX, §2941.

On motion of the state agencies and officials named as defendants, an order of suspensive appeal was granted, returnable on February 2, 2002.[2] The record was lodged in the Louisiana Supreme Court on January 25, 2002.

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[1] The *Penn* decision came before this Court's ruling in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 337 (2000).

[2] Louisiana Constitution Article V, §5(D) allows for direct appeal to the Louisiana Supreme Court whenever a state statute is invalidated as unconstitutional.

On June 21, 2002, the Louisiana Supreme Court declined to follow its earlier four-three per curiam decision in *Penn,* and held that the legislative bans "on campaign contributions by riverboat gaming and land-based casino interests do not violate the First and Fourteenth Amendments to the United States Constitution." *Casino Ass'n*, 2002-0265 at p. 4, 820 So.2d at 497.

III. SUMMARY OF THE ARGUMENT

The Petition for a Writ of Certiorari before the Court in the instant case lacks the appropriate grounds for the granting of certiorari. The sole issue in this case is whether the Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L that prohibits riverboat and land-based casino interests from making monetary contributions to political campaigns. This issue was addressed and resolved by this Court in *Buckley*, 424 U.S. 1, and again in *Shrink Missouri*, 528 U.S. 337.

Louisiana's Supreme Court properly upheld the challenged statute, applying the appropriate First Amendment standard of scrutiny set forth by this Court in *Shrink Missouri*, 528 U.S. 337. The Louisiana Supreme Court found the challenged statute closely drawn to support a sufficiently important governmental interest, the prevention of the appearance of corruption and the threat of actual corruption in the election process. This substantial state interest is sufficient to justify the state's restriction on political contributions from the gaming industry.

This Court has recognized that the prevention of corruption, or its appearance, is a legitimate and substantial governmental interest to support contribution restrictions. In fact, this Honorable Court has even characterized

the governmental interest as "compelling."[3] Louisiana has endured a unique and tortured relationship with governmental corruption and gambling. The state's history, the nature of the gaming industry, and the public perception of it must be considered in judging the significance of Louisiana's interest in restricting the gaming industry's influence in political campaigns.

The Louisiana Supreme Court properly found the statutory scheme to be closely drawn to effectuate the significant governmental interest of preventing corruption, or the appearance of corruption, by banning the flow of money from the gaming industry to political candidates. The statute applies only to those individuals or entities whose interests are deeply intertwined with the gaming industry.

The distinction between the freedom to make independent expenditures on the one hand, and restrictions on campaign contributions on the other, is an important aspect of this Court's jurisprudence since *Buckley*, and is recognized in the Louisiana Supreme Court's decision. Gaming interests are free to make independent expenditures as the statutory ban is narrowly tailored to cover only campaign contributions. All other customary avenues of free speech and political expression and association are open to the members of the gaming industry.

At least seven states have enacted bans on campaign contributions from casino interests and in two of those states the highest court has upheld the constitutionality of the bans. Other states have enacted similar bans on participants in other industries to prevent those groups from using campaign contributions to influence legislation regulating their industry. These restrictions evidence a

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[3] *Fed. Election Comm'n v. Nat. Conserv. Pol. Action*, 470 U.S. 480, 496-497 (1985).

national trend in the expression of American public policy that deserves recognition and deference.

Participation in certain regulated activities, or the granting of certain state-controlled privileges, often requires the concomitant restriction of certain other opportunities. The state has ultimate discretion under Louisiana's Constitution with regard to gaming, and may completely outlaw the activity in the state. Rather, the state has chosen to allow very restricted licensing which includes limits on the licensee's participation in state political campaigns.

IV. ARGUMENT

May it Please the Court:

A. There Are No Writ Grant Considerations Presented by This Case.

This case does not provide proper grounds for this Honorable Court to grant the Petition for a Writ of Certiorari. Supreme Court Rule 10 governs the considerations for granting certiorari, providing three basic grounds for the Court to exercise its discretion: (1) A conflict exists, on the same important matter, among the United States courts of appeal, or between a court of appeal and a state court of last resort, or a court of appeal's extreme departure from accepted and usual judicial proceedings, or its sanctioning of such from a lower court, calls for the exercise of this Court's supervisory jurisdiction; (2) a conflict has arisen on a federal question between a state court of last resort and another state court of last resort or of the United States court of appeals; (3) a lower court decision is in conflict with a decision of this Court, or an important question of federal law needs to be settled by this Court. The Casino Association does not specifically state which of these considerations it relies upon in seeking this Court's discretionary review, but appears to call upon all three in part.

The instant case presents one issue: Whether the Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L, under this Court's pronouncements in *Buckley*, 424 U.S. 1, and *Shrink Missouri*, 528 U.S. 337. However, the Casino Association's statement that "the lower courts have divided on the First Amendment's application to more than two dozen state laws imposing contribution bans that are defined by occupation or industry affiliation," is an attempt to create the illusion of conflict among the various courts of the states. Petition, 12. Yet only one state law, banning only one industry from making contributions, is properly presented in this case. While numerous states have a statutory ban on contributions, only two state courts have considered the issue presented herein: Louisiana and New Jersey. Both state courts upheld the constitutionality of a legislative ban on political campaign contributions from the casino industry.

Buckley and *Shrink Missouri* provide the principles upon which the Louisiana Supreme Court properly relied in determining that Louisiana may permissibly ban campaign contributions from the casino industry. *Buckley* established that while independent expenditures are treated as pure speech under the First Amendment, and are reviewed under strict-scrutiny, contribution limits bear on the freedom of association and are reviewed under a standard less exacting. This Court has ruled that contribution limits are permissible state action, but they must be closely drawn to serve a substantial state interest. The substantial state interest relied upon by Louisiana is the same interest that this Court has sanctioned repeatedly, the prevention of corruption and the appearance of corruption. Permissible campaign contribution limits are not determined by the rote comparison of dollar amounts. Rather, a court is to determine the impact of the contribution limit on the candidate's ability to amass the financial resources necessary to mount an effective campaign. All of these principles have been clearly set forth by this Court in *Buckley* and *Shrink Missouri*, with no issues left to be addressed; these decisions provided the framework for the

Louisiana Supreme Court's proper resolution of this case. As this Court has already addressed all the questions raised by Louisiana's statutory restrictions on campaign contributions from the Casino Association, the Court need not exercise its discretion to review the Louisiana Supreme Court decision.

1. Statutes are Presumed Constitutional.

"Statutes are presumed to be constitutional, and the burden of proving that an act of the legislature is unconstitutional is upon the party attacking the act." *Soloco, Inc. v. Dupree*, 1997-1256, p. 3 (La. 1/21/98), 707 So.2d 12, 14, citing *Moore v. Roemer*, 567 So.2d 75, 78 (La.1990). The burden is on the party attacking the legislative arrangement to "negative every conceivable basis which might support it." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973) (quoting *Madden v. Kentucky,* 309 U.S. 83 (1940)).

> A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.

Lehnhausen, 410 U.S. at 364-365 (quoting *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 510 (1937)).

"The power of the legislature is plenary, and a party challenging a statute's constitutionality must articulate a

particular constitutional provision that limits the legislature's powers." *Soloco, Inc.*, 1997-1256 at p. 3, 707 So.2d at 14, citing *Chamberlain v. State, Through DOTD*, 624 So.2d 874 (La.1993). In the instant case, the Casino Association failed to demonstrate to the Louisiana Supreme Court that La. R.S. 18:1505.2L violates the First Amendment of the United States Constitution. Instead, the Louisiana Supreme Court found that the campaign contribution limits in the statute fall within the permissible reaches of state legislative power under this Court's First Amendment analysis in *Buckley*, 424 U.S. 1, and *Shrink Missouri,* 528 U.S. 337.

2. The Louisiana Supreme Court Selected the Proper Standard For First Amendment Analysis.

Although campaign finance regulations operate in an area of First Amendment protection, a state may permissibly limit the ability to make campaign contributions. Under this Court's analysis from *Buckley* and *Shrink Missouri*, strict-scrutiny is not required for the examination of restrictions on campaign contributions. Rather, *Buckley* required that contribution limits be "closely drawn" to further a "sufficiently important" state interest. The Court explained that contribution limits burden only "one aspect of the contributor's freedom of political association." *Casino Ass'n*, 2002-2065 at p. 7, 820 So.2d at 500 (quoting *Buckley*, 424 U.S. at 24.). As stated in *Buckley*, "even a 'significant interference' with protected rights of political association may be sustained if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25.

Here, as in *Buckley* and *Shrink Missouri*, restrictions on campaign contributions, as distinguished from independent expenditures, are at issue. Restrictions on contributions are subject to a less stringent standard of review than restrictions on expenditures because the

making of a campaign contribution is not a direct expression of speech. As noted in *Buckley*:

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 21.

Buckley struck down the restrictions on expenditures within the Federal Election Campaign Act of 1971, while **upholding** contribution limits. The *Buckley* Court held as follows:

> By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.

Buckley, 424 U.S. at 20.

A contribution to a political campaign does not result in speech by the contributor, but rather purchases advertising or other campaign essentials that produce speech by the candidate or political party. Such "'speech by proxy' . . . is not the sort of political advocacy that [the] Court in *Buckley* found entitled to full First Amendment protection." *California Medical Association, et al. v. Federal Election Commission*, 453 U.S. 182, 196 (1981). In *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197 (1982), the Court upheld a prohibition against a non-profit corporation soliciting monies to be used to make contributions to political candidates from any person other than its "members." In finding that the legislation properly advanced the interest of Congress in preventing the potential for, or the appearance of, corruption, the Court decreed: "*Nor will we second-guess a legislative determination as to the need for prophylactic*

measures where corruption is the evil feared." Id. at 210 (emphasis added).

This deference toward legislative policy concerning campaign contributions is based upon the distinction between the contribution and the independent expenditure recognized in *Buckley*. "The Court concluded in *Buckley* that there is a fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to be spent on the campaign." *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 497 (1985); see also *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 283 (1986).

In *Shrink Missouri*, the Court reaffirmed the distinction between campaign contributions and independent expenditures, treating limits on expenditures as direct restraints on speech, while finding that contribution restrictions left speech significantly unimpaired because contribution limits bear more on associational freedom under the First Amendment. *Shrink Missouri*, 528 U.S. at 387-388.

As a result, the Court applies a less stringent standard in testing the constitutionality of limitations imposed on campaign contributions. The *Shrink Missouri* Court explained that under *Buckley*'s rationale, a contribution limit involving significant interference with associational rights will survive if the government demonstrates that regulating contributions is a means "closely drawn" to match a "sufficiently important interest." *Ibid.*

Therefore, the test which must be applied in this case is whether the statute provides a means "closely drawn" to further a "sufficiently important interest." The Louisiana Supreme Court properly selected this standard and applied it to uphold the constitutionality of the prohibitions in La. R.S. 18:1505.2L. The court stated:

> [T]he restriction is to [be] analyzed under the burden of proof enunciated in *Buckley*, as clarified in later Supreme Court cases, i.e. "that a contribution limit involving 'significant interference' with associational rights, could survive if the Government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest."

Casino Ass'n, 2002-0265 at p. 13, 820 So.2d at 504.

This Honorable Court need not exercise its discretion in the instant case because the ban on campaign contributions by riverboat and land-based casino gaming interests was properly tested in the Louisiana Supreme Court under this Court's guidelines in *Buckley* and *Shrink Missouri*.

a. There is No Constitutional Minimum Dollar Amount Below Which Legislatures May Not Regulate.

In *Shrink Missouri*, this Court considered a challenge that contribution limits between $250 and $1,000 were too low under *Buckley*'s rationale to be constitutional. Likewise, in the case at bar, the Casino Association argues that Louisiana's "limit of zero" is below the constitutional minimum. However, nothing in *Buckley* nor *Shrink Missouri* assigned a permissible minimum dollar amount for the restriction of campaign contributions. The Louisiana Supreme Court aptly rejected petitioners' argument that Louisiana's ban on contributions falls below a constitutional minimum dollar amount in reliance on this Court's statement in *Shrink Missouri,* that "[i]n *Buckley*, we specifically rejected the contention that $1,000 or any other amount, was a constitutional minimum below which the legislatures could not regulate." *Casino Ass'n*, 2002-0126 at p. 11, 820 So.2d at 502 (citation omitted) (italics supplied).

b. Louisiana Candidates "Amass the Resources Necessary for Effective Advocacy" Without Casino Association Funds.

The Louisiana Supreme Court is not the only state court to approve a legislative ban, or a "limit of zero," on contributions under *Buckley*. The United States District Court in the Eastern District of California recently upheld the California law that imposes a ban on lobbyist campaign contributions made to candidates for elected state office, and to officeholders. *Institute of Governmental Advocacy v. Fair Political Practices Commission*, 164 F.Supp.2d 1183 (E.D. CA 9/17/01). The California plaintiffs, like the Casino Association in the instant case, argued that the statute was unconstitutional because it banned, rather than limited, contributions. In rejecting that argument, the court stated:

> [C]ontrary to plaintiffs' assertions, a ban on contributions is *not* per se illegal. First, as set forth by the United States Supreme Court in *Nixon*, the test for determining the validity of the amount of a limitation (here a complete ban) is whether the limit is "so low as to impede the ability of a candidate to amass the resources necessary for effective advocacy."

Id. 164 F.Supp.2d at 1191 (citations omitted.).

A similar ban on contributions by lobbyists in North Carolina was also recently upheld. *North Carolina Right to Life v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000). The Louisiana Supreme Court was not unmindful of these pronouncements by sister state courts in determining the permissible limits of state public policy. The court upheld the ban on contributions in La. R.S. 18:1505.2L under the same standard applied by the California and North Carolina courts following this Court's reasoning in *Shrink Missouri*, that *Buckley* focused not on the discrete dollar amounts in the statutory restriction, but rather on the consequences of the imposition of

the restriction. The Louisiana Supreme Court, quoting *Shrink Missouri*, framed the issue as follows:

> [W]hether there was any showing that the limits were so low as to impede the ability of candidates to "amass the resources necessary for effective advocacy." We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render the contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to mount a campaign with all the dollars likely to be forthcoming.

Casino Ass'n, 2002-0265 p. 11, 820 So.2d at 502 (quoting *Shrink Missouri*, 528 U.S. at 396-397.) (internal citation omitted).

In the instant case, the Louisiana Supreme Court asked this question, as it was framed in *Shrink Missouri*, and found that the population of individuals affected by the contribution ban is too small to be capable of impeding the ability of candidates to "amass the resources necessary for effective advocacy."

> Unlike the across-the-board restrictions involved in Buckley and Shrink Missouri, the restrictions in this case involve just one licensed land-based casino and licensed riverboat gaming facilities throughout Louisiana. Thus, clearly, in this case, the ban will have a very minimal effect on the candidates' ability "to amass the resources necessary for effective advocacy."

Casino Ass'n, 2002-0265 at p. 11, 820 So.2d at 503 (quoting *Shrink Missouri*, 528 U.S. at 396.).

Petitioners admit that the ban affects "less than 300 individuals associated with Louisiana's fifteen riverboat casinos and one land-based casino." Petition, 4. While the members of the casino industry might be particularly generous if allowed to contribute to political campaigns,

petitioners cannot genuinely argue that candidates are prevented from mounting effective campaigns due to a lack of casino dollars. Candidates and committees in Louisiana are conducting effective campaigns and will continue to "amass the resources necessary for effective advocacy" without the potential campaign contributions from these 300 individuals.

3. The Prevention of Corruption is a Substantial State Interest in Louisiana.

Gaming is a legalized vice that poses unique dangers in Louisiana. Louisiana's Constitution, as far back as the Constitution of 1879, declared gambling a "vice" and directed the Louisiana Legislature to enact laws for its suppression. *Casino Ass'n*, 2002-0265 at p. 14, 820 So.2d at 504, citing LA. CONST. Art. 172 (1879), LA. CONST. Art. XII, §6(B) (1974). Despite the negative public perception reflected in the Constitutional directive, gambling continued in Louisiana in the eighteenth and nineteenth centuries, with New Orleans recognized as the state's gambling capital. *Id.* at 504, citing Timothy L. O'Brien, Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry (1998).

The Constitution was amended in 1866 to allow the Louisiana Lottery Company, a private corporation, to begin operation under a state charter. *Id.* at 504. New Orleans benefitted from the Lottery proceeds, gaining a charity hospital and upgrading the public schools. *Id.* at 504, citing Stephanie A. Martz, Note, Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks, 13 J.L. & Pol. 453, 458-59 (1997). However, in 1893 the federal government outlawed all forms of lottery sales and promotions. *Id.* at 505.

> Gambling remained available in New Orleans during the first decades of the twentieth century in small establishments around the city, even

> though the Constitution had outlawed all gambling. In 1934, [Governor] Huey P. Long allowed slot machines in New Orleans and several casinos outside the city. In the 1950s a reform movement ran the larger casinos away, but the slot machines and back-alley casinos stayed in business until the 1970s.

Casino Ass'n, 2002-0265 at p. 14, 820 So.2d at 505 (internal citations omitted).

In the early 1990's Louisiana's economy suffered a downturn. The legislature "turned to legalized gambling as a means out of the fiscal doldrums." *Ibid.* The Louisiana Supreme Court found that the Gaming Control Law "announced the public policy of this State concerning gaming." In La. R.S. 27:2(A), the Louisiana Legislature stated:

> The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people **by keeping the state free from criminal and corrupt elements**. The legislature further finds and declares it to be the public policy of the state that to this all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be **strictly regulated**.

Id. at 506 (emphasis added).

The Gaming Control Act additionally declared gaming "to be a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana." La. R.S. 27:2(B); *Id.* at 506 (and cases cited therein). The same legislative session that produced the Gaming Control Law

saw the enactment of the statutory ban on contributions at issue in this case, La. R.S. 18:1505.2L.

The Court should consider the significance of the governmental interest behind the enactment of the contribution restrictions in light of the express legislative intent in the Gaming Control Law that gaming be "strictly regulated" so as to protect the public from "criminal and corrupt elements" and that engaging in the business of gaming is a "privilege and not a right." La. R.S. 27:2(B). As noted by the Louisiana Supreme Court, ample evidence of the legislature's intent regarding the statute can be found in its legislative history; La. R.S. 18:1505.2L was introduced in the legislature with the following information:

> . . . [w]e're attempting to track as well in this legislation what was done in New Jersey[4] which is the only state we know of that has imposed a statutory ban on gambling contributions.
>
> * * *
>
> . . . I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen. . . .
>
> * * *
>
> . . . I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the

[4] Referencing *Petition of Soto v. State of New Jersey*, 236 N.J. Super. 303, 565 A.2d 1088, *cert. denied*, 121 N.J. 608 (1989), *cert. denied*, 496 U.S. 937 (1990).

> past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state . . . it is directed to [sic] specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.
>
> * * *
>
> . . . I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political contributions.

Casino Ass'n, 2002-2165 at p. 17, 820 So.2d at 507 (quoting Senator Dardenne, see Committee on Senate & Governmental Affairs, Verbatim Transcript, Meeting of March 26, 1996, Senate Bill 12.).

As the quoted discussion makes clear, the Louisiana Legislature intended La. R.S. 18:1505.2L to provide a means of limiting the likelihood of a recurrence of corruption in the electoral process in this state. *Shrink Missouri* and *Buckley* found "the prevention of corruption and the appearance of corruption" to be a "constitutionally sufficient justification" for campaign contribution restrictions. 528 U.S. at 388 (citing *Buckley*, 424 U.S. at 25-26). Therefore, the express purpose behind the statute at issue in this case, the prevention of corruption and the appearance

of corruption by the gaming industry upon the political process, is a constitutionally sufficient justification for the campaign contribution restrictions under *Buckley* and *Shrink Missouri*.

Having established that the legislature intended that La. R.S. 18:1505.2L provide a means of preventing corruption, and that *Buckley* and its progeny approved the prevention of corruption, or the appearance of corruption, as a legitimate and substantial governmental interest sufficient to support legislative limits and restrictions on campaign financing, the Louisiana Supreme Court turned to an examination of the evidence in the court record that establishes the public's perception that gaming is associated with political corruption; the court explained:

> Evidence provided to the trial court in this case included affidavits outlining the public perception that gaming is associated with political corruption, information that within the last ten years, nine states (including Louisiana) have prosecuted governmental officials in gaming cases, and statistics showing the staggering sum of money collected by those within the gaming industry. This evidence illustrates why the legislature found it was imperative to prohibit campaign contributions from persons engaged in the gaming industry.

Casino Ass'n, 2002-0265 at p.19, 820 So.2d at 508.[5]

Recognizing that *Shrink Missouri* cautioned that the "quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up

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[5] See e.g. most recently, *United States v. Edwin Edwards, et al.*, 01-30036 (5th Cir. 8/23/2002), ___ F.3d ___, (Former Governor, his son and business associates, convicted of extortion, mail and wire fraud, and RICO violations in connection with their rolls in various schemes to make money from Louisiana's Riverboat Casinos by exploiting the Governor's apparent ability to influence the licensing process.).

or down with the novelty and plausibility of the justification raised," the Louisiana Supreme Court reasoned:

> Given the history of the gaming industry and its connection to public corruption, it is completely plausible, and not at all novel, for the Louisiana Legislature to have concluded that it was necessary to distance gaming interests from the ability to contribute to candidates and political committees which support candidates.

Casino Ass'n, 2002-0265 at p. 19, 820 So.2d at 508.

4. The Statute is Closely Drawn to Meet the Governmental Interest of Preventing Corruption.

The Louisiana Supreme Court properly rejected the Casino Association's argument that the statute is not "closely drawn" to support a sufficiently important government interest because there are less restrictive means available to address the state's concerns. In *Buckley*, the Court rejected the same argument: that the contribution limits must be invalidated because other provisions such as bribery laws and disclosure requirements constitute a "less restrictive means" of meeting the state interests. *Buckley* concluded, and this Court reaffirmed in *Shrink Missouri*, that contribution limitations target the problem of "large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified. . . . " *Casino Ass'n*, 2002-0265 at p. 20, 820 So.2d at 508. Additionally, contribution restrictions do not limit the Casino Association's ability "to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Buckley*, 424 U.S. at 28, *Shrink Missouri,* 528 U.S. at 396, *California Medical Ass'n,* 453 U.S. at 199, n. 20. In disposing of the Casino Association's claim, the Louisiana Supreme Court stated:

> For the same reasons, we also reject the gaming interests' argument that the statute serves no legitimate purpose because other statutes, such as La. R.S. 27:310(B)-(C) already impose rigorous background checks and strict licensing restrictions on gaming interests, guaranteeing that anyone who obtains a gaming interest is "suitable" and honest.

Casino Ass'n, 2002-0265 at p. 20, 820 So.2d at 508.

In *Republican Party of Minnesota v. White,* 122 S.Ct. 2528, 2534, U.S. (2002) (No. 01-521), the Court invalidated an "announce clause," prohibiting state judicial candidates from announcing their views on issues in political campaigns, under the more rigorous strict-scrutiny review.

> Under the strict-scrutiny test, respondents have the burden to prove that the announce clause is (1) narrowly tailored, to serve (2) a compelling state interest. In order for respondents to show that the announce clause is narrowly tailored, they must demonstrate that it does not "unnecessarily circumscribe protected expression."

Id. at 2534 (citations omitted).

In examining the clause under a more demanding review than that required in the case at bar, the Court found that the clause was not narrowly tailored to serve the government interest of impartiality, stating:

> We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in this sense. Indeed, the clause is barely tailored to serve that interest *at all,* inasmuch as it does not restrict speech for or against particular *parties,* but rather speech for or against particular *issues."*

Id. at 2535 (emphasis in original).

The restriction at issue in this case applies, by petitioners' admission, to particular persons, approximately

300 persons of the 17,000 employed by the gaming industry in Louisiana. See Petition at 4 and 7. As the statute at issue in this case, La. R.S. 18:1505.2L places its restriction upon particular parties, rather than on particular issues, it would be deemed "narrowly tailored" under this Court's analysis in *Republican Party* and would pass the more stringent strict-scrutiny test where the announce clause failed. *A fortiori*, if the statute is "narrowly tailored" for purposes of the most demanding strict-scrutiny review, it must be "closely drawn," satisfying the less exacting review required by the Court in *Shrink Missouri*.

5. La. R.S. 18:1505.2L is Not an Unnecessary Abridgment of Associational Freedoms.

The Louisiana Supreme Court made specific findings that ample opportunities exist for individuals in the gaming industry to fully express their First Amendment rights in the political process despite the statutory ban on campaign contributions. For example, as espoused in *Shrink Missouri*, members of the casino industry may make independent expenditures supporting or opposing particular candidates without limitation.[6] Further, gaming entities may urge their employees to support or oppose particular candidates, and corporate officers and employees may demonstrate their individual support of candidates by displaying yard signs and/or volunteering to work in campaigns. Gaming companies may even sponsor phone banks designed to encourage persons to vote. Louisiana Ethics Board Opinion No. 99-424.

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[6] Petitioners claim in their brief that the Louisiana Supreme Court misread the Campaign Finance Disclosure Act to determine that these individuals may make unlimited independent expenditures. This claim is inaccurate.

In *Schiller Park Colonial Inn, Inc. v. Berz*, 63 Ill.2d 499, 349 N.E.2d 61 (1976), an Illinois statute made it illegal for any liquor licensee, or company representative, to contribute directly or indirectly to a political party or candidate. The Illinois Supreme Court explained that the statute at issue did not prohibit liquor licensees from engaging in "any type of 'pure speech,'" as they were free to express their political opinions and announce their support for candidates or political parties, exercise their voting rights, or join political parties, or volunteer their services to those parties or groups. *Id.* at 508.

The decisions in *Schiller Park*, *Buckley*, and *California Medical Association* each recognize the distinction between direct speech and the type of "speech by proxy" represented by campaign contributions. As stated by the Court in *Buckley* and quoted in *California Medical Association*:

> While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 21, and *California Medical Ass'n*, 453 U.S. at 197.

The Honorable Justice Stevens, in his concurring opinion in *Shrink Missouri*, elaborated on the speech by proxy concept by stating:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

528 U.S. at 398 (Stevens, J. concurring).

The Louisiana Supreme Court appropriately placed utmost importance on the distinction between pure political speech and speech by proxy in examining the constitutionality of La. R.S. 18:1505.2L. The statute does not infringe upon the 300 casino industry employees' ability to engage in pure free political speech; rather, the court determined that the statute imposes a limited restriction on key members of the casino industry's ability to contribute money for use by another person. The statute imposes a minor limitation on First Amendment associational rights; a limitation narrowly tailored to meet the state's substantial interest in preventing the corruption of candidates for political office, justifiably based upon the historically corrosive influence of money flowing from the casino industry into state politics.

6. The Trend Among the States in Enacting Limitations on Campaign Contributions Evidences Concurrence in National Public Policy.

Louisiana does not stand alone in enforcing the public policy of restricting the gaming industry's influence on state government. Indeed, at least seven other states have banned contributions from gaming interests.[7] However,

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[7] Indiana, Ind. Stats. 4-33-10-2.1 (Prohibits contributions from any officer or person who holds an interest in a gaming entity.), Iowa, Iowa Stats. 99F.6(4)(a) (Prohibits contributions from riverboat gambling corporations.), Kentucky, Rev. Stats. 154(a).160 (Prohibits contributions from persons owning lottery contracts.), Michigan, Mich. Stats. 7(b)(4)-(5) (Prohibits contributions from any licensee or person who has an interest in a gaming entity.), Nebraska, Neb. Stats. 49-1469.01 (Prohibits contributions from lottery contractors for duration of contract and three years after.), New Jersey §5:12-138 (Prohibits contributions from casino officers or key employees.), Virginia, §59.1-375, 376 (Prohibits contributions from pari-mutual corporations, executives and their spouses and families.).

only one other reported decision specifically addresses the constitutionality of a comparable restriction on campaign contributions by gaming interests: *Petition of Soto v. State of New Jersey*, 236 N.J. Super. 303, 565 A.2d 1088, *cert. denied,* 121 N.J. 608 (1989), *cert. denied,* 496 U.S. 937 (1990). In *Soto*, the Superior Court of New Jersey held that the state had a compelling interest in "maintaining the integrity of political parties and organizations from undue influence by those individuals who, by the very nature of their employment, play a pivotal role in the casino industry." *Soto*, 565 A.2d at 1098. The New Jersey court commented, "[g]ambling is an activity rife with evil, so prepotent its mischief in terms of the public welfare and morality that it is governed directly by the [New Jersey] Constitution itself." *Id.* at 1097. In further support of the governmental purpose sought to be achieved by the ban on campaign contributions by gaming licensees, the New Jersey court noted:

> Given the acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry, but also the governmental process which so closely regulates it, *Greenberg*, 99 N.J. at 574, there is no viable alternative available to prevent the appearance of, or actual, corruption on the political process in New Jersey. As noted by Justice Pollock in *Greenberg* "a perception that any improper influence has infiltrated the [regulatory and judicial] processes, however slightly, would undermine the trust that is essential to the continued confidence in the industry and, what is more important, in state government."

Id. at 1098.

The Louisiana and New Jersey Courts are the only two state courts that have examined a ban such as the one at issue in this case, and those courts are in agreement that the ban is constitutional under the principles set forth by this Honorable Court in *Buckley* and *Shrink*

Missouri. Since the issue has only been examined twice, and both courts are in agreement, there is no conflict which this Court needs to resolve through its discretionary review.

Other state courts have considered similar types of bans on contributions by particular industries. For instance, a complete ban on contributions was upheld by the Illinois Supreme Court in the case of *Schiller Park Colonial Inn, Inc.*, 63 Ill.2d 499. The Illinois statute made it illegal for any liquor licensee, or company representative, to contribute directly or indirectly to a political party or candidate. The ban was upheld and the court noted that the legislature was allowed to ban contributions of any amount, not just large contributions. Using a rationale similar to that of the Louisiana and the New Jersey courts, the Illinois court upheld the statute because the "nature of the liquor industry is a prime consideration in judging the validity" of the ban on liquor licensees making campaign contributions. 63 Ill.2d at 507.

Delaware, Florida, Montana, and Washington prohibit insurers from making contributions to candidates for the Office of Insurance Commissioner. Delaware Code 18 §2304(6); Florida Statutes Title XXXVII §627.0623; Montana Code Ann. 33-18-305; and Washington RCW 48-30.110. The State of Florida also prohibits licensed food outlets and convenience stores from contributing to Commissioner of Agriculture candidates. Florida Statutes Title IX §106.082. In Georgia, public utilities are prohibited from contributing to any political campaign. Official Code of Georgia Ann. 21-5-30(f). Georgia law further prohibits any regulated entity from contributing to any candidate for the office that regulates that entity. Official Code of Georgia Ann. 21-5-30.1.

These varied state statutes reflect the national public policy that contributions from certain highly regulated industries pose a threat to the integrity of the election process. Louisiana's Supreme Court has properly analyzed

and upheld the contribution ban in the context of the gaming industry and the state's public policy concerns.

7. Privileges May Be Permissibly Burdened with Certain Limitations.

The ability to operate a gaming establishment in Louisiana is a highly-regulated privilege conferred by state license pursuant to terms and conditions carefully prescribed by the state. *Casino Ass'n*, 2002-0256 at p. 15, 820 So.2d at 505. See also *Catanese v. Louisiana Gaming Control Board*, 97-1426 (La. App. 1 Cir. 5/15/98), 712 So.2d 666, 670. The Louisiana Legislature specifically declared gaming "a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana." *Casino Ass'n*, 2002-0256 at p. 16, 820 So.2d 506; The Gaming Control Act, La. R.S. 27:2(B). Moreover, it is a lucrative privilege with statistics showing the staggering sums of money collected by those in the gaming industry.[8] In exchange for the ability to reap these huge returns in an industry with limited participants, licensed gaming entities and individuals are obliged to forego some political rights. The limitations are similar to those imposed upon classified civil servants in Louisiana and at the federal level, members of the Louisiana Civil Service Commission,[9] judges in Louisiana,[10] and members of the Louisiana Board of Ethics.[11]

Louisiana civil service employees and commissioners, and, for that matter, Ethics Board members, are legislatively required to surrender their "rights" to make campaign

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[8] *Casino Ass'n*, 2002-0256 at p. 19, 820 So.2d at 508.

[9] LA. CONST. Art X., §9.

[10] La. Code of Judicial Conduct, Canon 7.

[11] La. R.S. 42:1132B(3)(e).

contributions as well as engage in other political activity in consideration of the appointment to highly discretionary governmental positions. Judges are likewise severely limited in their political expression. Considering that licensed and regulated gaming interests control discretionary and lucrative governmental permits giving substantial corresponding business opportunities, it is responsible, and constitutionally permissible, for the state to burden these applicants with reasonable and narrowly tailored restraints against certain types of campaign contributions.

Indeed, courts have long upheld restrictions on the political activities of federal and state civil servants which are much more extensive than the restrictions at issue here.[12] The Court has concluded in such cases that "[n]either the right to associate nor the right to participate in political activities is absolute." *United States Civil Serv. Comm'n v. Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973).

The Casino Association complains that it is subject to different requirements than the video poker industry because in *Penn* the Louisiana Supreme Court declared similar contribution restrictions unconstitutional as to the video poker industry. 751 So.2d 823. Petitioners argue that the court's failure to follow its prior opinion in *Penn* is illogical and renders the Louisiana Supreme Court's opinion arbitrary. However, the Louisiana Supreme Court declined to follow its earlier decision in *Penn*, not due to Justice Lemon's retirement, but rather because the court found significant differences between the regulation of the video poker industry and the Casino Association. See Petition, 9; *Casino Ass'n*, 820 So.2d at 497, 509. The

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[12] See, *Ricks v. Department of Civil Service*, 200 La. 341, 8 So.2d 49 (1942).

Louisiana Supreme Court found that there are an unlimited number of video poker licenses available, whereas, only one land-based casino and 15 riverboat casinos have been licensed in Louisiana. *Id.* at 509. The prohibitions at issue in *Penn* also did not apply equally to all persons engaged in the video poker industry, while the restrictions in this case are uniform. *Ibid.* This Honorable Court has expressed the same principle in *California Medical Association*, as follows:

> The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.

453 U.S. at 201.

It is the state's contention that differing restrictions and limitations may be placed on those individuals and entities licensed to operate video poker lounges than those entities licensed to operate casinos. In this case, the state believes, justifiably, that the casino industry requires a different, more complete form of regulation to protect the public from corruption and the appearance of corruption in the electoral process. As a result, the legislature has imposed a uniform ban on political contributions from those individuals that are integral to the casino industry. In reliance on this Court's jurisprudence, the Louisiana Supreme Court properly upheld this public policy decision made by the state's legislature.

V. CONCLUSION

The Louisiana Supreme Court properly upheld the constitutionality of La. R.S. 18:1505.2L based upon a wealth of state and federal jurisprudence supporting the validity of a statutory ban on campaign contributions from

certain, narrowly-defined, sources. The Louisiana Supreme Court's opinion is correct and should be allowed to stand.

The Court has consistently and repeatedly recognized the substantial governmental interest in preventing corruption or the appearance of corruption which results from the indebtedness of political candidates to their contributors. The Court has even referred to this governmental interest as "compelling."[13]

The prohibitions in La. R.S. 18:1505.2L are specifically directed to insulate candidates for public office, and the electoral process, from the actual and perceived corrosive effect of financing by the gaming industry. The history and nature of the gaming industry, and the public perception of it, make the interests served by La. R.S. 18:1505.2L compelling. The gaming industry is different from other industries and poses unique dangers. The legislature has moved thoughtfully and temperately in its efforts to prevent the gaming industry from harming public trust in government.

The legislature has chosen to "legalize" this vice, against the background of a state constitutional mandate to "suppress" gambling, and under heavily-regulated standards intended to minimize the industries' capacity to wield undue influence. The legislature could have chosen to completely ban such gaming activities. Those who successfully seek the substantial pecuniary rewards associated with casino gambling should reasonably be obliged to comport with the statutory licensing requirements – including the challenged ban on campaign contributions.

For these reasons, this Honorable Court should deny the Casino Association's Petition for a Writ of Certiorari,

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[13] *National Conservative Political Action Committee*, 470 U.S. at 496.

allowing the Louisiana Supreme Court opinion to stand, maintaining the constitutionality of the challenged sections of Louisiana's Campaign Finance Disclosure Act.

Respectfully submitted,

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(4)

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CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

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REPLY BRIEF

The Louisiana Campaign Statute extends campaign finance regulation in a manner never reviewed by this Court: It *bans* contributions by a *small, targeted group.* Respondent provides no reason for this Court not to consider whether this statute – like targeted contribution bans in other states, *see* Opp. at 23 – impermissibly denies Petitioners' First Amendment rights of association and expression.

1. Respondent ignores the important issues raised by Louisiana's targeted contribution ban, issues which were not presented in either *Buckley v. Valeo*, 424 U.S. 1 (1976), or *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000). Instead, Respondent assures the Court that there are "no issues left to be addressed" in the application of the First Amendment in this area. Opp. at 6. That assurance is belied by the Louisiana Supreme Court's decisions upholding the Campaign Statute in this case after finding it unconstitutional when applied to the video poker industry. *Penn v. State ex rel. Foster*, 751 So. 2d 823 (La. 1999), *cert. denied sub nom. Louisiana v. Penn*, 529 U.S. 1109 (2000).[1]

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[1] Respondent attempts to justify those opposing holdings by comparing the Louisiana Campaign Statute to the federal ban on corporate political contributions. Opp. at 28. The analogy does not hold. The "differing structures and purposes" of corporations and individuals justify the federal ban on corporate contributions, *California Medical Ass'n v. Fed. Election Comm'n*, 453 U.S. 182, 201 (1981), but no comparable distinction may be made between the "structures and purposes" of the video poker and casino businesses.

The Louisiana statute skews public discussion and denies First Amendment rights based on a person's participation in the casino industry, a legal economic activity. By prohibiting that targeted group from making any campaign contributions, the statute silences those persons in one important respect, even though the State itself has found that the silenced individuals and entities have sufficient integrity and honesty to be "suitable" for casino licensing. Pet. at 6-7.

By denying to this specific population the ability to make political contributions, the statute is a powerful political weapon that offends the First Amendment's concern for the democratic process. If the Louisiana Campaign Statute survives, what is to prevent the majority party in any state legislature from extending that model to cripple political rivals? Equally, three recent insurance commissioners in Louisiana have been convicted on criminal charges.[2] On that basis, may the insurance industry be deemed specially susceptible to corruption and may insurance-related persons be banned from making political contributions? Respondent's bland assurances can conceal neither the disturbing loss of First Amendment rights imposed by the Louisiana statute nor the broad potential use of this political weapon in the future.

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[2] *See United States v. Brown*, 303 F.3d 582 (5th Cir. 2002) (insurance commissioner convicted of making false statements); *United States v. Green*, 964 F.2d 365 (5th Cir. 1992) (insurance commissioner convicted of mail fraud and money laundering). *See also* "Edwards joins list of jailed state officials," The Daily Advertiser, October 20, 2002, available at 2002 WL 26407387 ("[state insurance commissioner] Sherman Bernard pleaded guilty to taking bribes disguised as campaign contributions").

2. Respondent also assures this Court that the statute is "closely drawn" for First Amendment purposes because it eliminates the rights of only a relatively small group of individuals and entities. Opp. at 20-21. Respondent misconceives this constitutional doctrine. The First Amendment does not require that the deprivation be confined to the rights of only a few, but that no such rights be restricted unnecessarily. *Republican Party of Minnesota v. White*, 122 S.Ct. 2528, 2534 (2002); *Shrink Missouri*, 528 U.S. at 387-88. The Campaign Statute cannot meet that standard.

Respondent points to no empirical evidence to support a targeted ban, as opposed to the state-wide limit presented in *Shrink Missouri*. Instead of empirical evidence, Respondent offers generalized historical references or anecdotal incidents, neither of which justifies a targeted ban. *Shrink Missouri*, *id.* at 390-91.

Moreover, the Campaign Statute bars contributions that otherwise meet Louisiana's statutory requirements that contributions be between $1,000 and $5,000 per candidate (depending on the office) and be publicly disclosed.[3] By authorizing such contributions by all *other* Louisianans, the legislature plainly concluded that such contributions neither are corrupt in themselves nor give the appearance of corruption. Such contributions can hardly be transformed into corrupt actions when they are made by parties found by the state to have sufficient integrity and honesty to be "suitable" for casino licensing, or when made by their spouses. The statute thus prohibits

[3] La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a).

contributions that are presumptively not corrupt and should give no appearance of corruption, and is not closely drawn for First Amendment purposes.

3. Review of this case would complement this Court's examination of the federal corporate contribution ban challenged in *Fed. Election Comm'n v. Beaumont*, No. 02-304. In *Beaumont*, the U.S. Court of Appeals for the Fourth Circuit held that certain non-profit corporations should be exempt from the broad federal ban on corporate campaign contributions. 278 F.3d 261 (2002). This case presents the quite distinct question whether the First Amendment permits a contribution ban that *targets* a small group of entities and individuals because of their association with a single industry. The resolution of both questions would greatly clarify the First Amendment's impact on campaign finance laws.

For the foregoing reasons and those stated in the petition, the petition for writ of certiorari should be granted.

Respectfully submitted,

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